1945 File No. S Dwo 4/45

Legal DEPARTMENT
~~A~~ BRANCH

Subject:— Civil Suit No 20 of 1944

Chandappayya Bhimappayya
Deshpande Plff
VS
1) The Govt of Bombay
2) Pushpavalibai Bheemappayya
Deshpande Defts

Civil Appeal No. 33 of 1946

Second Appeal No 2 of 1948

F: Plff
E

5/45

File No. S Dwo 4/45

Std. Sectt. Slip 24-B

CONTENTS

Legal Department File No1 S. Dwr 5/45

Sr. No.	Compilation No.	Subject	Pages
		Suits Dharwar.	
		C.S. No 20 of 1944	
		C. B. Deshpande	
		V/s Plff:	
		1) The Govt. of Bombay and one another.	
	Printed G.R.L.D. No. 7693 6th Nov. 1944	For a declaration that the orders passed by Govt. directing ~~the Managers Deshpande~~ are illegal and ultra vires. Sanctioning the defence of the suit.	23
2	G.R.L.D No 4028 29th May 1946	Recording the result of the suit	67
3	G.R.L.D. 4163 5th June 1946	Sanctioning the defence of the First Appeal No. 33 of 1946.	73
4	G.R.L.D. 2367 6th March 1948	Recording the result of the ~~appeal~~	179

CONTENTS

Legal Department File No1 S Dwr. 5/45

Sr. No.	Compilation No.	Subject	Pages
5	G.R. L.D. 3158 1st April 1948	Sanctioning the defence of the 2nd Appeal No. 2 of 1948	181
6	G.R. L.D. 12843 9th August 1945	Recording the result of the Appeal	195

24 1

From,

Chandappayya adoptive father Bhimappayya Deshapande, Annigeri, Tal. Navalgund, Dist. Dharwar.

To,

The Collector of Dharwar,

D h a r w a r.

Respected Sir,

I hereby beg to give notice under section 80 of the C.P.C. of a suit to be filed by me against the Government of Bombay, in the First Class Court, Dharwar. The suit will be of the following nature and for reliefs claimed as under :-

In the court of the First Class Sub Judge,

At Dharwar.

1. Chandappaya Bhimapayya Deshapande, caste Jain, age 31, occupation watani wahivat and agri, of Annigeri Tal. Navalgund District Dharwar.....Plaintiff.

Versus.

1. The Government of Bombay, Bombay.
2. Pushpawatibai Kom Bheemappayya Deshapande Jain, age 43, household work, Annigeri Tal. Navalgund Dist. Dharwar.....Defendants.

In this suit plaintiff above named begs to state as under

1. Pedigree of the plaintiff's family is hereto appended.

2. The Deshapande watan of Annigeri and the neighbouring village is an ancient watan. The plaintiff's family enjoyed the watan since the time of the Mohomedan Kings of Bijaour. This watan was acquired by the projenitor of the family Dharmarassayya shown in the pedigree. After the extention of the British Rule to this part of the country the family enjoyed the watan of Deshapandegiri. They held these lands of Deshapande watan without payment of any assessment during this period. Besides Deshapande watan/ the family owns and enjoys the kulkarniki watan in

three villages around Annigeri ~~Annigeri proper~~.

In the year 1863 under the Gordon Settlement a Sanad was issued by the British Government relieving the then watandar from service on payment of fixed judi. The Deshapandegiri watan consists of the watan lands in Annigeri and Bhadrapur and Cash allowance of Rs 128.

The adoptive father of the plaintiff Bhimapayya Chandappayya Deshapande died on 17th March 1929 leaving behind him his two widows Chandrabai (adoptive mother of plaintiff) and Pushpawatibai defendant No.2 The senior widow according to the desire of late Bhimapayya Deshapande adopted the plaintiff on 16-6-32 to her deceased husband. Thus plaintiff has become owner to the Deshapandegiri watan consisting of lands at Annigeri and Bhadrapur and cash allowance and also other properties of late Bhimapayya Deshapande and as such he is in possession of all the properties of late Bhimapayya Deshapande.

Before plaintiff was adopted by the senior widow of late Bhimapayya the two widows of Bhimapayya namely, Chandrabai and Pushpawatibai applied to the Government to give permission to adopt the plaintiff. But their prayer was refused by the Government. The plaintiff contends that the refusal to give permission was illegal on the following among other grounds:-

(a) The condition No.3 of the Sanad issued to the plaintiff's family under the Gordon settlement does not restrict that the Deshapandegiri watan family of the plaintiff should adopt from the watan family alone. It allows the adoption of an outsider in the family.

(b) The restriction put in by subsequent portion of the same clause namely, there should be an application by all the share-holders of the watan is only to safeguard the interest of share-holders, if any and as there are no sharers in the Deshapandegiri watan of Annigeri the widows as representing the estate of the deceased applied for such permission.

(c) The widows of late Bhimapayya sufficiently complied with this condition when they applied for permission and offered to pay Nazarana and as such the Government was bound to

23 3

give sanction to the adoption of the plaintiff.

(d) The Annigeri Deshapandegiri watan family has a right according to the custom of the family to take the boy in adoption from the outside and this has been recognised by the Government. Government sanctioned the adoption of an outsider in the family in the year 1848 (vide Government letter Revenue Department No. 7515 dated 2nd December 1848). Thus the plaintiff's adoption is legal, under condition No.3 of the Sanad and as such he is entitled to hold the Deshapandegiri watan lands, and cash allowance on payment of judi only according to the terms of the Sanad.

5. But the Government after refusing permission to the adoption of the plaintiff have passed an order dated 28th November 1931 Resolution No.5288/28 Revenue Department "That the Annigeri Deshapandegiri watand lands should be continued to the legal successor of late Bhimapayya Chandapayya Deshapande as Khlsa lands, on payment of full assessment with effect from the year 1929-30." This order is void as being ultra vires and illegal and not binding on the plaintiff for the following reasons:-

(a) The Government has not considered the ancient nature of the watan and proceeded on the wrong assumption that a re-grant was made by the British Government. The Sanad issued by the Government affirms the old rights of the family and it embodies a new agreement regarding the service of Deshapandes to the Government. The Government has given up the rights of taking service from the Deshapandes on their agreeing to pay a certain sum of Judi to the Government per year.

(b) The nature of the original grant is not taken into consideration.

(c) The Government has failed to appreciate the proper scope and significance of Inam Commission and Gordon Settlement.

(d) Government proceeded on the assumption that the settlement

arrived at between Government and watandar as a re-grant by the British Government.

(e) The case of re-grant is repugnant to the wording of the Sanad issued to the plaintiff's family.

(f) A re-grant was beyond the powers of any Gordon Committee or the Government of Bombay.

(g) The Government ought to have considered that the original nature of the watan continued unaltered.

(h) Government has not taken into consideration the condition of the Sanad namely the watan and cash allowance should be continued for ever to the liniel descendants of the watan family on payment of fixed judi and the watandar being loyal to the British Government. The plaintiff being adopted son of late Bhimapayya Deshapande is a lineal descendants of the watan family is not taken into consideration.

(i) The first condition of the Sanad was not properly construed

(j) Government wrongly decided that there was non-fulfilment of the condition of the Sanad.

(k) The order of treating watan lands as khalsa lands and levying full assessment is not justified under any law.

(l) The Revenue Authorities have passed the order exparte against the plaintiff and they are enforcing the order against the rights of the plaintiff.

For these grounds the order dated 20th November 1931 is ultra vires and not binding on the plaintiff.

6. The Revenue Authorities are levying full assessment on the Deshapandegiri watan lands and also have stopped payment of cash allowance to the present plaintiff though he is legally entitled to cash allowance. Hence the present plaintiff has brought this suit for declaration that he is legally adopted son of late Bhimapayya Chandapayya Deshapande and as such the watandar of Deshapandegiri watan of Annigeri, that the order of levying the full assessment on the watan lands and declaring the watan lands as khalsa is illegal ultra vires and not binding on the plaintiff, and for declaration of his title to hold watan ~~xx~~ lands and cash allowance according to the terms of the Sanad and other incidental reliefs.

The cause of action arose on the date on which the plaintiff was adopted to late Bhimapayya Deshapande i.e on 16-6-32 within the jurisdiction of the Dharwar First Class Court.

The valuation for court fees is as below:-

(a) For declaration that the order by Government in G. R. No.5288/28 dated 20th November 1931 is null and void being illegal and ultra vires and not binding on the plaintiff is valued at Rs 200/-

(b) Declaration that the plaintiff is entitled to hold the watan lands without payment of full assessment and to cash allowance as the heir of deceased Bhimapayya Deshapande is valued at Rs 200/-

(c) Permanent injunction to defendant No.1 not to levy the full assessment on the watan lands and to pay cash allowance is valued at Rs 5/-

(d) Declaration that plff is entitled to all the amount realised by officers of defendant No.1 and credited in Government Treasury in excess of the judi payable to the Government and cash allowance accrued till the date of suit is valued at Rs 200/-

Thus the court fee is paid on Rs 605/- i.e Rs 45/6/- only

For the purposes of jurisdiction and pleader's fees the suit is valued at Rs 605/- only.

Defendant No.2 is the widow of the deceased Bhimapaya Deshapande the adoptive father of the plaintiff. The order complained against by the plaintiff is made against her and the deceased adoptive mother of the plaintiff. So she has been made a party to the suit.

The plaintiff prayer is as follows:-

1) It should be declared that the order passed by the Govt. of Bombay in their Resolution 5288/28 dated 20th November1931 is null and void as being illegal and ultra vires, and not binding on the plff.

2) It should be declared that plff as legally adopted son of Bhimapaya Deshapande is entitled to hold wata lands without payment of full assessment, and to allowance

3. A permanent injunction to defendant No.1 and the officers and agents of defendant No.1 not to levy full assessment on the watan lands of Deshapandegiri watan of Annigeri of the plaintiff and to pay cash allowance from the date of the suit.

4. It should be declared that plff is entitled to all the amounts collected by the officers of defendant No.1 in excess of the Judi and to cash allowance held in deposit from the date of adoption of the plaintiff together with all future accretions with proper interest thereon.

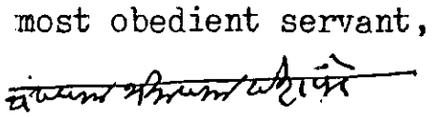
5. For the costs of the suit from defendant No.1.

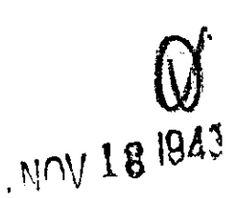
This is the nature of the suit which I am going to file against the Government of Bombay. It is submitted that your honour would see your way to mend the matters. If not the suit will be filed after two months of the service of this notice according to law.

Hoping that your honour would see your way to mend the matters

Annigeri
17-11-1943

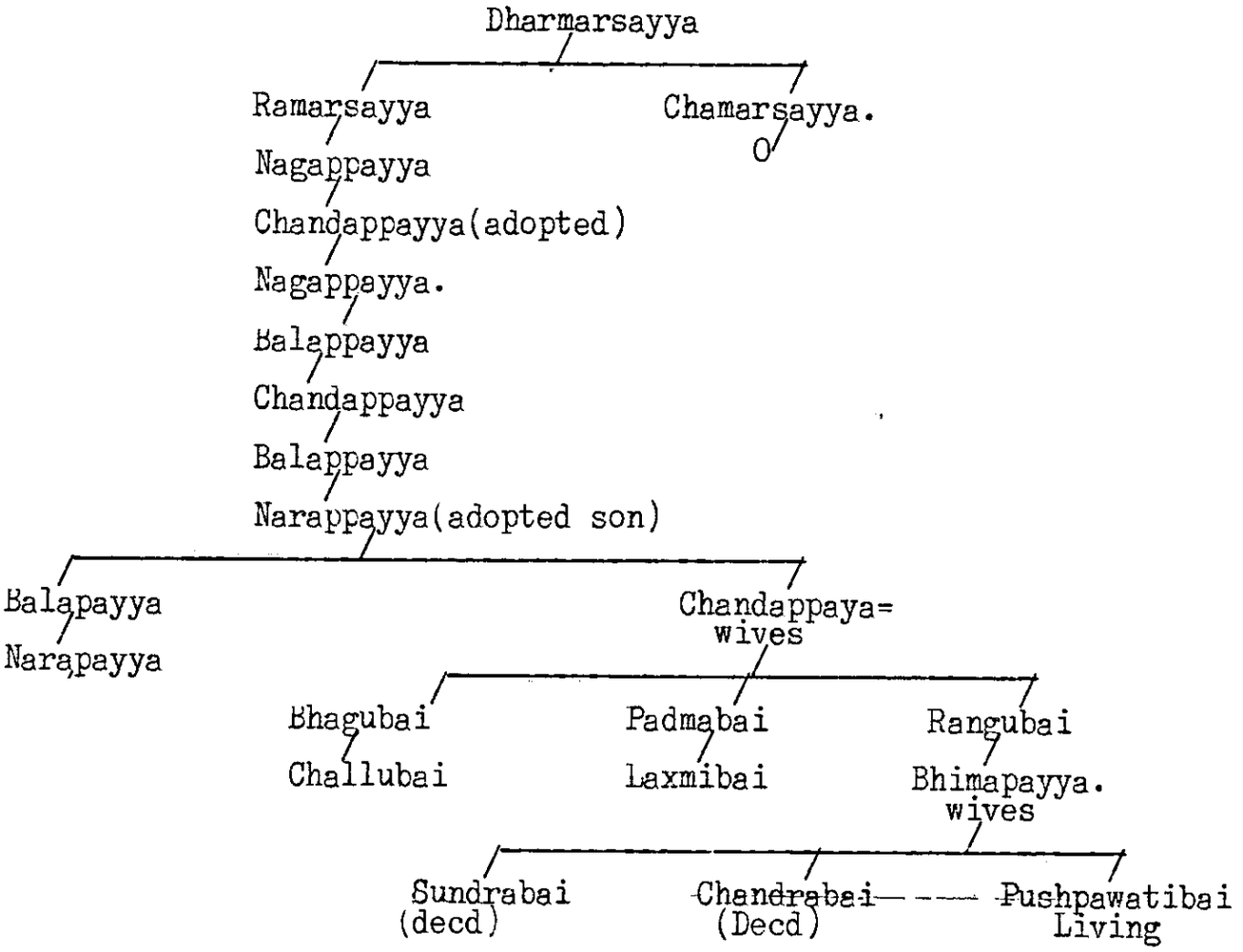
I beg to remain,
Respected Sir,
Your most obedient servant,





5 -2- 77

Geneology of the family of Deshapande of Annigeri, Taluka Navalgund, District Dharwar is as under :-



Chandappayya has been adopted by Chandrabai and to her husband.

This geneology is prepared according to my information with reference to old documents.

17th Nov. 1943

Spl. Suit No. 20 of 1944.

Schedule B.

1. Lands situate at Annigeri village in the Navalgund Taluka of the Dharwar District:

Serial No.	Survey No.	Area	Assessment	Approximate Value.
1	8/1	1-39 P.K. 1	2- 2- 0	
2	8/2	2-17 P.K. 4	2- 9- 0	
3	°/3	5- 0- P.K. 2	5- 5- 0	
4	9	10-24 P.K. 9	13- 0- 0	
5	50	7-12	12- 0- 0	
6	73	14- 2	25- 0- 0	
7	74	3-39	5-0- 0	
8	75	8-11	17- 0- 0	
9	80	19-34	26- 0- 0	
10	81/1	13-30	17- 7- 0	
11	81/2	11-19	14- 9- 0	
12	86	4-13	5- 0- 0	
13	87	23-37	31- 0- 0	
14	119	19- 0 P.K. -20	25- 0- 0	
15	120/1	0-16	0- 6- 0	
16	120/2	0-17	0- 6- 0	
17	304	11-22	24- 0- 0	
18	305	15- 5	31- 0- 0	
19	323	21- 4 P.K. 4-32	46- 0- 0	
20	324	13-20 P.K. 0- 6	26- 0- 0	

Serial No.	Survey No.	Area	Assessment	Approximate Value.
21	542	3-27	8- 0- 0	
22	544	12-31	28-30- 0	
23	545	20-30	44- 0- 0	
24	698	11- 5	22- 0- 0	
25	703	28-19	50- 0- 0	
26	704	23- 1	27- 0- 0	
27	705	18-20	27- 0- 0	
28	706	12-31	22- 0- 0	
29	707/1	17-17	21-10- 0	
30	707/2	4- 0	5- 6- 0	
31	708	21-13	29- 0- 0	
32	709	25- 5	38- 0- 0	
33	710	23-13	39- 0- 0	
34	711	20- 9	25- 0- 0	
35	712	23- 9	39- 0- 0	
36	713	24-10	39- 0- 0	
37	714	23-31	31- 0- 0	
38	715	23-32	39- 0- 0	
39	716	18-38	28- 0- 0	
40	717	26-16	43- 0- 0	
41	718	12- 0	19- 0- 0	
42	719/1	20- 0	32- 2- 0	
43	719/2	4-23	6-14- 0	
44	720/1	6-35	9-15- 0	
45	720/2	7-24	11- 1- 0	
46	721	29-38	41-0 - 0	
47	722	28-31	38- 0- 0	
48	723	18-21	24- 0- 0	
49	724	26- 0	42- 0- 0	
50	725	26-16	38- 0- 0	
51	726	28-11	48- 0- 0	
52	727	12-33	16- 0- 0	
53	728	22-30	33- 0- 0	
54	729	23-21	35- 0- 0	

(13) 4/3

Serial No.	Survey No.	Area	Assessment	Approximate value.
55	730	21-25	35- 0- 0	
56	731	21-11	36- 0- 0	
57	732	26-33	40- 0- 0	
58	733	16- 4	26- 0- 0	
59	734	15-37	23- 0- 0	
60	735	22- 1	36- 0- 0	
61	736	19-12	33- 0- 0	
62	737	23- 5	33- 0- 0	
63	738	27-30	45- 0- 0	
64	739	21-24	31- 0- 0	
65	740	24-24	40- 0- 0	
66	741	15-17	25- 0- 0	
67	742	14- 1	18- 0- 0	
68	743	6-36	10- 0- 0	
69	744	6-11	7- 0- 0	
70	745	16-15	21- 0- 0	
71	746	16-14	24- 0- 0	
72	747	14-26	21- 0- 0	
73	748	13-35	18- 0- 0	
74	749	15- 5	19- 0- 0	
75	750	17- 1	22- 0- 0	
76	751	16-39	29- 0- 0	
77	836	19- 5	42- 0- 0	
78	838	6-16	16- 0- 0	
79	877	16- 9	30- 0- 0	
80	879	13- 1	25- 0- 0	

Serial No.	Survey No.	Area	Assessment.	Approximate value
81	880	19-27	37- 0- 0	
82	882	7- 0	13- 0- 0	
83	883	14-16	22- 0- 0	
84	885	16-36	26- 0- 0	
85	893	20-19	27- 0- 0	
86	894	18-32	26- 0- 0	
87	909	24-15	30- 0- 0	
88	963	16-12	20- 0- 0	
89	964	17-34	23- 0- 0	
90	967	13-30	25- 0- 0	
91	968	15-11	25- 0- 0	
92	969	20-24	28- 0- 0	
93	970	20-14	38- 0- 0	
94	971	21-15	41- 0- 0	
95	972	22- 5	40- 0- 0	
96	973	23- 2	42- 0- 0	
97	974	25-23	50- 0- 0	
98	975	25-19	51- 0- 0	
99	976	25-11	49- 0- 0	
100	977	20- 1	38- 0- 0	
101	978	21-39	37- 0- 0	
102	979	18-33	35- 0- 0	
103	980	19-36	40- 0- 0	
104	981	17-22	32- 0- 0	
105	982	22- 2	43- 0- 0	
106	983	22-24	42- 0- 0	

(14) 45/13

Serial No.	Survey No.	Area	Assessment	Approximate value.
107	984	16-34	27- 0- 0	
108	985	16-15	24- 0- 0	
109	986	24-11	42- 0- 0	
110	987	26-17	41- 0- 0	
111	988	20-32	35- 0- 0	
112	994	28-31	45- 0- 0	
113	1032	9-18	17- 0- 0	
114	1033	18-18	29- 0- 0	
115	1034	18-25	28- 0- 0	
116	1035	16-33	24- 0- 0	
117	1036	14-22	21- 0- 0	
118	1037	25-34	44- 0- 0	
119	1038	19- 5	36- 0- 0	
120	1039	17-24	25- 0- 0	
121	1040	19-29	32- 0- 0	
122	1041	27-34	46- 0- 0	
123	1345	8- 9	15- 0- 0	
124	1346	4-34	9- 0- 0	
125	1347	5-17	9- 0- 0	
126	1468/1	12-20	17-12- 0	
127	1468/2	9-13	13- 4- 0	
128	1469/1	12-18	24-12- 0	
129	1469/2	4- 6	8- 4- 0	
130	1470	20-33	36- 0- 0	
131	1471	21-37	30- 0- 0	
132	1490/A + 1B	20-32	33- 8- 0	

Serial No.	Survey No.	Area	Assessment	Approximate value
133	1490/2	7-31	12- 8- 0	
134	1491/A + B	11-14	16-12- 0	
135	1491/2	6-38	10- 4- 0	
136	1492	14- 8	23- 0- 0	
137	1498	14-19	28- 0- 0	
138	1499/1	9-3,	17-15- 0	
139	1499/2	8- 0	14- 6- 0	
140	1499/3	8- 7	14-11- 0	
141	1500/1	8- 0	15- 2- 0	
142	1500/2	5-30	10-14- 0	
143	1501/1	8-10	15- 8- 0	
144	1501/2	10-35	20- 8- 0	
145	1502/1	4-16	6-14- 0	
146	1502/2	4-24	7- 2- 0	
147	1505/1	4-25	7-10- 0	
148	1505/2	5-25	9- 6- 0	
149	1506	9-31	15- 0- 0	
150	1507	3-17	6- 0- 0	
151	1508	15-25	23- 0- 0	
152	1509	29-34	60- 0- 0	
153	1510	26-35	55- 0- 0	
154	1511	24-20	40- 0- 0	
155	1512	20-30	46- 0- 0	
156	1513	12-13	25- 0- 0	
157	1514	22- 4	44- 0- 0	
158	1518	15-15	22- 0- 0	
159	1519	15- 8	27- 0- 0	

(15) 47

Serial No.	Survey No.	Area	Assessment	Approximate value.
160	1520	9- 1	20- 0- 0.	
161	1521	16-33	27- 0- 0	
162	1522	20-10	39- 0- 0	
163	1523	10-22	23- 0- 0	
164	1524	11-39	27- 0- 0	
165	1525	16-37	34- 0- 0	
166	1526	14-31	28- 0- 0	
167	1527	22-21	44- 0- 0	
168	1528	8-30	20- 0- 0	
169	1529	7- 7	16- 0- 0	
170	1530/1 + 2	24- 7	47- 0- 0	
171	1531	26- 5	52- 0- 0	
172	1534	17-26	39- 0- 0	
173	1535	12-30	29- 0- 0	
174	1536	19- 1	43- 0- 0	
175	1551	6- 5	14- 0- 0	
176	1552	9-39	22- 0- 0	
177	1553	9- 7	21- 0- 0	
178	1554	9-33	20- 0- 0	
179	1555	7-11	13- 0- 0	
180	1556	5-32	- 0- 0-	
181	1557	4-28	8- 0- 0	
182	1558/1	4-38	7- 0- 0	
183	1558/2	4-10	6- 0- 0	
184	1559	1-17	2- 8- 0	
185	1560	0-12	0- 8- 0	

Serial No.	Survey No.	Area	Assessment	Approximate value
186	1561	6-10	8- 0- 0	
187	1566	5-33	1[illegible]- 0- 0	
188	1568	6-12	8- 0- 0	
189	1570	5- 2	10- 0- 0	
190	1571	0-31	1- 8- 0	
191	1572	1-22	3- 0- 0	
192	1573	2-18	5- 0- 0	
193	1574	3-12	6- 0- 0	
194	1575	5- 8	9- 0- 0	
195	1576	5-24	8- 0- 0	
196	1577	5- 3	6- 0- 0	
197	1588	9-19	12- 0- 0	
198	1579	5-10	9- 0- 0	
199	1580	3-22	5- 0- 0	

Lands situate at Bhadrapur Taluka Navalgund in the District of Dharwar.

Serial No.	Syrvey No.	Area	Assessment	Approximate Value
1	249	17- 2	36- 0- 0	
2	250	16- 5	32- 0- 0	
3	251	20-11	41- 0- 0	
4	252	19-29	41- 0- 0	

73-7 150

20-1-44

Spl. Suit No. of 1944.

Schedule C

The particulars of cash allowances pertaining to the Deshapande Watan of Annigeri is as follows:-

S.No.	Name of the treasury paying the allowance.	Amount.
1.	Naval gund Sub Treasury.	Rs 128/-.

Verified that the contents of the schedules are true to the best of my knowledge and belief in proof whereof I have affixed my signature.

Dated 19-1-1944..

20-1-44

Dharwar Civil Suit No.20/1944.

The suit is for a declaration that the orders passed by Government in Government Resolution, Revenue Department No.5288/28 dated 20th November 1931, directing the Annigeri Deshpande watan lands to be continued to the legal successors of the late Bhimappayya Chandappayya as Khalsa lands on payment of full assessment are illegal and ultra vires. The Annigeri Deshpande watan consisting of nearly three thousand acres of land and a cash allowance of Rs.128 was acquired by one Dharmarassayya the progenitor of the Deshpande family during the Mahomedan rule in Bijapur. In 1864 the watan came under the Gordon settlement and a sanad dated 13th April 1864 was granted to the then holder of the watan. The material terms of the sanad were (1) that the lands and cash allowances would be continued without demand of service and without increase of tax over a fixed amount, so long as any male heir to the watan, lineal, collateral or adopted within the limits of the Watandar family shall be in existence; and (2) that when all the sharers of the watan agreed to request it, then the general privilege of adopting at any time any person (without restriction as to family) who can be legally adopted, would be granted by Government to the watan on payment of annual Nazrana. On 17th March 1929 the last holder Bhimappayya died childless leaving him surviving his two widows. On 4-12-1929 the widows applied to Government for permission to adopt a stranger to the watan family. The permission was however refused and as there were no male heirs in existence as laid down by the Sanad, Government in their Resolution aforesaid directed resumption of the watan by the levy of full assessment. The plaintiff

was adopted on 16th June 1932. He claims that as the adopted son of the deceased Bhimappayya he is the lineal male heir of the watan and therefore entitled to succeed to the watan property. Against this contention the defence is that at the date of the orders passed by Government, the plaintiff was not in existence as the lineal male heir of the deceased Bhimappayya. The only heirs were two females. In such cases Government's right to resume the watan on failure ~~on failure~~ of male heirs has been recognised by the High Court in Ramsomappa v. Secretary of State 39 Bom.L.R. 851. Government's orders are therefore valid and plaintiff's contentions to the contrary are not tenable. The suit is also time barred under Article 120 of the Limitation Act. Sanction may be accorded to the defence of the suit on the lines of the accompanying brief.

It appears from the Asstt.Govt. Pleader's letter dated 28th October 1944 that on the last date of hearing the Court has declined to grant further adjournment for filing written statement. The Dist.Govt.Pleader has therefore requested that the defence may be sanctioned at a very early date. Hence the case is marked very urgent.

RLA
31/10

RLA
1/11/44

The preparation of the brief was delayed because certain R & Rs which were called for from the R.D. have not yet been received. The brief has been prepared in the absence of those papers in view of the A.G.P's letter aforesaid. After the papers are received from the R.D. the grounds of defence will be supplemented if necessary

Sec. RD

x 10-7534
1-11-44

x V.O.A. No 7537 dt. 1st Nov. 1944

Reg
Asstt Govt Pleader
3/11

In the Court of the First Class Sub-Judge.

At Dharwar.

Dharwar Civil Suit No.20 of 1944.

Chandappayya Bhimappayya Deshapande ..... Plaintiff.

versus

1. The Government of Bombay.
2. Pushpavatibai kom Bheemappayya Deshpande... } Defendants.

Written Statement on behalf of the defendant No.1 is as follows:-

1. The plaintiff's suit is time barred under Article 120 of the Limitation Act.

2. The plaintiff has not produced a certificate under the Pensions Act, 1871, from the Collector. In the absence of such certificate the Court has no jurisdiction to entertain the suit in respect of the cash allowance under sections 4 and 6 of the Pensions Act.

3. The suit is brough on insufficient court fee stamp. The plaintiff's prayer in paragraph 15 clause (iv) of the plaint is in reality a prayer for the refund of the amount recovered by Government as full assessment. The plaintiff appears to assume that if he gets the declaration prayed for in this clause he will automatically get the refund of the amount recovered from him. It is submitted however, that what the plaintiff ask for is a refund and unless he states the exact amount which he claims by way of refund and pays the necessary court fees on that amount he cannot get any relief in this respect.

4. The orders passed by Government in G.R.,R.D.No.5288/28 dated 20th November 1931 are valid and intra vires and bindin

upon the plaintiff. Plaintiff's allegations to the contrary in paragraph 6 and 7 of the plaint are denied.

5. The plaintiff was adopted on 16th June 1932 i.e. subsequent to the orders passed by Government. At the date of those orders he was not in existence as the lineal male heir of the deceased Phimappayya Chandappayya. The only persons left in the watan family at the death of the deceased were his two widows who being females could not satisfy the requirements of the first proviso of the Sanad granted to the family. Under that proviso the lands were to be continued only so long as there was any male heir lineal colleteral or adopted within the limits of the watandar faimly was in existence. As such an heir did not exist at the date of Bhimappayya's death it was xxxxxxx within the powers of the Government under the terms of the Sanad to resume the Paragne Watan by the levy of full assessment. For the same reason Government had also a right to stop payment of cash allowance in case there was no requisite heir.

6. The allegations in paragraph 5 of the plaint are denied. Under the terms of the sanad it was competent for the defendant to refuse permission to the widows to adopt a stranger to the watan.

7. The plaintiff's rights are concluded by the sanad granted under the Gorden Settlement.

8. The plaintiff is not therefore entitled to any relief.

9. It is therefore submitted that the suit fails and must be dismissed with costs.

District Government Pleader, Dharwar.

I, District Government Pleader, Dharwar, do hereby declare that what is stated in para 1 to 9 above is true according to the information received and believed to be true. This verification is made xx at Dharwar on the day of November 1944.

District Government Pleader, Dharwar.

67
23

A/ *Suits :*

Dharwar.

For a declaration that the orders passed by Government directing the Annigeri Deshpande watan lands to be continued to the legal successors of the late Bhimappayya Chandappayya as khalsa lands on payment of full assessment are illegal and *ultra vires*. /A

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7693.

Bombay Castle, 6th November 1944.

Letter from the Collector of Dharwar, No. L.A.W. 444, dated the 14th August 1944 Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

In the [redacted] First Class Sub-Judge, Dharwar.

[redacted]ng Cause Civil Suit No. 20 of 1944.

Chandappayya Bhimappayya Deshpande of Annigeri Plaintiff.

versus

(1) The Government of Bombay; (2) Pushpavatibai *kom* Bheemappayya Deshpande } Defendants.

Claim—Rs. 605.

Endorsement by the Commissioner, Southern Division, No. L.S.T.-317, dated the 17th August 1944—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 7692, dated the 6th November 1944—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original

P. N. MOOS,
Secretary to Government.

G. R., No. 7693, L. D., dated the 6th November 1944.

To

Issued 1st 10 14

*The Revenue Department.
*The Commissioner, Southern Division,
*The Collector of Dharwar,
*The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1945.

Copy forwarded for information and guidance to.

Submitted after issue
file in a new suit file. 4-11-45
19-4-45 P. A. to 11/4

892

DHARWAR CIVIL SUIT No. 20 OF 1944.

Chronological Statement of Facts.

In this suit the plaintiff challenges the validity of the order passed by the Government of Bombay in Government Resolution, Revenue Department, No. 5288/28, dated the 20th November 1931, directing the Annigeri Deshpande Watan lands to be continued to the legal successors of the late Bhimappayya Chandappayya as Khalsa lands on payment of full assessment from the year 1929–30.

2. The Deshpande Watan of Annigeri (taluka Navalgund) is a Paragana Watan consisting of some two thousand nine hundred acres of lands in the village of Annigeri and about seventy-three acres of lands in the village of Bhadrapur *plus* a cash allowance of Rs. 128 payable annually from the Navalgund Sub-Treasury.

3. The aforesaid Watan, it is alleged, was acquired by one Dharmarassayya, the progenitor of the Deshpande family (as shown in the geneology in Schedule A annexed to the plaint) during the time of the Mahomedan Rulers at Bijapur. Since then it had been enjoyed by the Deshpande family without the payment of assessment and had continued to be so enjoyed even after the introduction of the British Rule.

4. In the year 1864, the Watan came under the Gordon Settlement and a sanad No. 41, dated the 13th April 1864, was issued to Balappayya *bin* Narappayya the then holder of the Watan (*see* extract from the Land Alienation Register attached to File I). The Gordon Settlement sanad relieved the Watandar from rendering service on payment of a fixed judi.

5. On 17th March 1929, Bimappayya Chandappayya, the then holder of the Watan died leaving behind him his two widows namely Chandrabai, since deceased, and Pushpavatibai who is defendant No. 2 in the present suit. Bhimappayya's first wife Sundrabai had predeceased him in February 1929.

6. Bhimappayya having died childless, his two widows aforesaid submitted an application, dated the 4th December 1929,* to the Collector of Dharwar requesting him to move Government to grant them permission to adopt to their deceased husband Bhimappayya, a stranger to the Watan family. Such permission was necessary under the third condition of the Gordon Settlement sanad in accordance with which the petitioners had expressed their willingness to pay from that time forward an annual Nazrana of one anna in each rupee of the total emoluments of the Watan. The petitioners had also produced with their application copies of Government Letter, Territorial Department, No. 7576, dated the 2nd December 1848 and the Mahalkari's letter No. 1125, dated the 23rd June 1849 to show that Government had permitted one Bhagubai the widow of a previous Watandar to take in adoption Narappayya, the grand father of the deceased Bhimappayya.

*Presented on 9th December 1929.
p. 1 of file I.

p. 15 do.

p. 17 do.

7. The application was forwarded to the Assistant Collector for inquiry and report. He in turn forwarded it to the Mamlatdar of Navalgund for compliance. On 14th February 1930 and 7th March 1930 respectively, both these officers recommended that as there were no male heirs in the family and as the applicants were willing to pay the Nazrana, sanction may be accorded to the adoption of an outsider.

8. It appears however that permission to adopt a stranger as requested by the widows was refused and by Government Resolution, Revenue Department, No. 5288/28, dated the 20th November 1931 it was ordered that the Annigeri Deshpande Watan Lands should be continued to the legal successors of the late Bhimappayya Chandappayya as Khalsa lands on payment of full assessment with effect from the year 1929–30.

9. On 28th January 1932, the Collector requested the Mamlatdar of Navalgund to recover full assessment on the lands comprising the Annigeri Deshpande Pargana Watan from 1931-32 and also to recover the "Nuksan" (difference between judi and assessment) over these lands for 1929-30 and 1930-31. The Mamlatdar was also requested to make a note in the village records that the lands had been converted into Khalsa from 1929-30 [*vide* Collector's No. W.T.N. (N.S.) 360, dated the 20th January 1932]. p. 1 of file IV.

10. The total assessment on the lands amounted to Rs. 5,094-4-0. The Judi paid by the widows amounted to Rs. 1,385-9-0. Thus a sum of Rs. 3,708-11-0 was due from the widows by way of "Nuksan" for each of the years 1929-30 and 1930-31. For 1931-32 there had been a suspension of half the amount of land revenue so that the widows had to pay for that year Rs. 2,865-0-0 including local fund. Thus the total amount to be collected from the widows for the three years came to Rs. 10,282-6-0. p. 6 do.

11. On the 12th June 1932, the widows applied to the District Deputy Collector for permission to pay off the aforesaid amount by instalments. The Mamlatdar therefore recommended that the request may be granted and that the arrears for the first two years amounting to Rs. 7,417-6-0 may be collected in four annual instalments commencing from 1931-32 in addition to the dues for that year. This proposal was recommended by the Collector to Government who accepted it by Government Resolution, Revenue Department, No. 5288/28, dated the 20th December 1932. p. 11

12. In the meantime, on 16th June 1932, the deceased Chandrabai who was the senior widow took in adoption the plaintiff Chandappayya.

13. On 14th September 1933, the Mamlatdar reported that the first instalment of Rs. 1,854-5-6 had been paid by the plaintiff. Further instalments also appear to have been regularly paid. It further appears that the plaintiff's request to allow him to pay off the last instalment on account of the arrears of "Nuksan" till the end of March 1937 was also granted by Government Memorandum, Revenue Department, No. 5288-F/28, dated the 28th September 1936. Accordingly the last instalment was credited on 30th March 1937. p. 53 do.

14. On 17th November 1943, the plaintiff gave a notice of the suit under section 80 of the Civil Procedure Code to the Collector of Dharwar and filed the present suit on 20th January 1944 in the Court of the First Class Subordinate Judge, Dharwar, praying for the following reliefs—

(1) a declaration that the order passed by Government in Government Resolution, Revenue Department, No. 5288/28, dated the 20th November 1931 is *ultra vires* and not binding on the plaintiff;

(2) a declaration that the plaintiff, as the legally adopted son of the deceased Bhimappayya is entitled to hold the Watan lands without payment of full assessment and to cash allowance;

(3) a permanent injunction restraining the defendant No. 1 (the Government of Bombay) and their officers from levying full assessment on the Watan lands and to pay cash allowance from the date of the suit;

(4) a declaration that the plaintiff is entitled to all amounts recovered by the officers of the defendant No. 1 in excess of the Judi and to cash allowance held in deposit from the date of the adoption of the plaintiff together with all future accretions with proper interest thereon; and

(5) for costs.

Grounds of Defence.

Limitation.—In paragraph 8 of the plaint it is contended that the cause of action arose on 16th June 1932 i.e. the date on which the plaintiff was adopted to Bhimappayya Deshpande. This is not correct. The real cause of action for this suit

arose on 20th November 1931 when Government ordered th resumption of the Watan by the levy of full assessment However even assuming that the plaintiffs contention i correct, the suit is in any case time barred under Article 12 of the Indian Limitation Act as it is filed more than six year after the date of the Government order and also the date o plaintiff's adoption.

2. *Jurisdiction.*—The payment of the cash allowance o Rs. 120 which is appurtenant to this Watan appears to hav discontinued since the passing of the Government Resolutio of 1931 (*vide* plaint paragraph 7). The plaintiff claims tha as the legally adopted son of the deceased Bhimappayya he i entitled to the payment of this cash allowance. Unde sections 4 and 6 of the Pensions Act, 1871, a Civil Court cannot take cognizance of such a claim in the absence of a certificat from the Collector. In paragraph 12 of the plaint, the plaintif has alleged that he has applied to the Collector of Dharwa for granting a certificate under that Act and probably the plaintiff might produce the certificate during the pendency of the suit if it is granted to him. If he fails to produce the certificate the suit will be barred under sections 4 and 6 of the Pensions Act, 1871.

3. *Court-fees.*—In paragraph 15(IV) of the plaint, the prayer is for a declaration that the plaintiff is entitled to all amounts collected by the officers of Government in excess of the Judi with proper interest thereon. The plaintiff has framed the suit in this respect in the form of a declaratory suit only, probably thinking that if he gets the declaration, he will automatically get a refund of the amount of assessment in excess of the Judi collected from him. This is only a device to avoid payment of proper court fees. It may be noted that Government has recovered a considerable sum on account of full assessment from the year 1920–30 up to the year 1942–43. The assessment for the first three years alone amounted to Rs. 10,282–6–0 (*vide* C. S. F. paragraph 10). It should therefore be urged that unless the plaintiff makes the necessary amendment by stating the exact amount which he claims by way of refund and pays court fees thereon no relief in this respect can be granted.

4. *Merits.*—The Annigeri Deshpande Paragana Watan came under the Gordon Settlement in about 1863. On 13th April 1864, a sanad in respect of this Watan was granted to the then Watandar Balappayya Narappayya. The sanad was in Form No. 4 given in Appendix E of Joglekar's Alienation Manual. Under the terms of the sanad it was provided (*a*) that the lands and cash allowance shall be continued without demand of service and without increase of land tax over the above fixed amounts and without objection or question on the part of Government as to the rights of any holders thereof, so long as any male heir to the Watan, lineal, collateral or adopted within the limits of the Watandar family, shall be in existence; and (*b*) that when all the sharers of the Watan agree to request it, then the general privilege of adopting at any time any person (without restriction as to family) who can be legally adopted, will be granted by Government to the Watan, on the payment from that time forward in perpetuity of an annual Nazrana of one anna in each rupee of the total emoluments of that Watan.

5. Now the plaintiff contends in the first place that the refusal of the Government to give permission to the widows of the deceased Bhimappayya to adopt a non-watandar was illegal on the ground (1) that the restriction imposed in the sanad on the adoption of a non-Watandar was only for safeguarding the interest of the other sharers in the Watan family; (2) that the widows of Bhimappayya had complied with this condition when they applied for permission to adopt the plaintiff; and (3) that there is a custom in this family to adopt a boy outside the Watandar family and that such an adoption has been recognised by Government in 1848. It is unnecessary at this stage to enter into the merits of these contentions in view of the latest orders of Government. The policy of the Government in regard to succession to Paragana Watans as laid down in Government Resolutions, Revenue

Department, No. 9234/24, dated 25th July 1928 and 20th November 1928 was not to recognise the adoption of non-Watandars so far as the question of succession to Watan lands and cash allowances was concerned. Subsequently Government decided to follow the High Court's decision in Balaji *v.* Datto (I. L. R. 27 Bom. 75) and it was accordingly ordered in Government Resolution, Revenue Department, No. 2658/28, dated 4th April 1938, cancelling the orders passed in the Resolutions of 1928, that in all cases of Paragana Watan settled under the Gordon Settlement the adoptions of non-Watandars which are made without the permission of Government and without the consent of other sharers in the Watan, if otherwise valid should be recognised so long as there is in existence a lineal male heir of the original grantee of the watan. Even assuming therefore that the adoption of the plaintiff is valid the question that still remains to be considered is whether the orders passed by Government in Government Resolution, Revenue Department, No. 5288/28, dated 20th November 1931 are illegal. The plaintiff challenges the validity of these orders on the grounds stated in clauses (*a*) to (l) of paragraph 5 of the plaint. Shortly stated, his contentions are that Government did not take into consideration the nature of the original grant, that the sanad issued by Government affirmed the old rights and embodied a new agreement regarding the commutation of service, that the plaintiff as the adopted son of the deceased Bhimappayya was a lineal descendant of the family and that therefore the first proviso of the sanad had been fulfilled. With reference to these contentions it should be urged in the first place that the plaintiff's rights are concluded by the sanad granted under the Gordon Settlement. He can enforce only such rights as have been recognised by Government and such rights as were enjoyed by his predecessors in the preceding rule avail him nothing (*see* Vajesinghji *v.* Secretary of State, 26 Bom. L. R. 1143). Now the first proviso of the sanad laid down that the Watan would be continued so long as any male heir to the Watan lineal, collateral or adopted within the limits of the watandar family shall be in existence. Therefore in the absence of such male heir Government had the right to resume the Watan lands by the levy of full assessment. This right of Government has also been recognised in Ram Somappa *v.* Secretary of State (39 Bom. L. R. 851). In the present case in 1929 at the date of the death of Bhimappayya no such male heir was in existence. The only persons left in the Watan family were his two widows who being females could not satisfy the requirements of proviso 1 of the sanad. The plaintiff was not adopted till 16th June 1932 and therefore at the date on which the Government Resolution in question was passed he was non-existant as a male heir of the deceased. It was therefore within the powers of the Government to resume the Paragana Watan lands by the levy of full assessment. It is equally clear that Government had a right to stop payment of cash allowance in the same circumstances. The orders of Government are therefore legal and *intra vires* and plaintiff who was adopted into the Watan family subsequent to the passing of those orders is bound by them.

6. For these reasons therefore it should be urged that the suit fails and must be dismissed with costs.

29-5-47

In the Court of the Civil Judge, Senior Division,

At Dharwar. Ex. 284.

L.C.Civil Suit No. 20 of 1944.

Pleade..

Mr. Indi.

1. Chandrappayya Bhimappaya Deshpande since deceased his heir son.

1(a) Bhimappayya Chandrappayya Deshpande, age 11, occupation student minor by his next friend mother Chitravatibai Bhratar Chandappayya Deshpande of Annigeri taluka Navalgund, Jain, age 28, household work.

..... Plaintiff.

Against.

.Halapur r No. 1.

1. The Government of Bombay, Bombay.

Mr.Bendigeri for 2.

2. Pushpavatibai kom Bhimappayya Deshpande of Annigeri taluka Navalgund, Jain, age 43, household work.

..... Defendants.

Claim Rs. 605.

The Plaintiff sues to obtain the following reliefs:-

(a) A declaration that the order passed by the Provincial Government of Bombay in their Resolution No. 5288/28, dated 20th November 1931 was illegal and ultra vires and therefore null and void and not binding upon the plaintiff.

(b) A declaration that the plaintiff as the validly and legally adopted son of the deceased Bhimappayya Chandrappayya Deshpande was entitled to hold the Deshpandegiri Watan lands of Annigeri and Bhadrapur on payment of Judi only and to receive the cash allowance.

(c) A permanent injunction restraining the Government of Bombay and its officers and agents from

levying full assessment upon the said lands and a mandatory injunction directly the Government to pay the cash allowance to the Plaintiff from the date of suit.

(d) a declaration that the plaintiff was entitled to get back the amounts collected by the Revenue Officers over and above the amount of Judi and to the amount of cash allowance illegally withheld with interest thereon.

(e) To recover the costs of suit from the defendant No. 1.

(f) The plaintiff alleges in the Plaint that the Deshpande Watan of Annigeri and the neighbouring villages was an ancient Watan, that the plaintiff's family was in the enjoyment of the said Watan since the time of the Mohomedan Kings of Bijapur, that the original acquirer of the Watan was one Dharmarasayya as shown in the pedigree attached to the plaint as Schedule A, that the family held the lands described in Schedule B without payment of any assessment or Judi before the advent of British rule in this part of the country, that in the year 1866, the British Government gave a Sanad under the Gordon Settlement under which the services to be rendered were dispensed with on condition of payment of a fixed Judi, that the last representative Watandar died on the 17th March 1929 leaving him behind two widows by name Chandrabai and Pushpawatibai (deft No. 2), that the senior widow Chandrabai adopted the plaintiff on 16-6-1932 to her deceased husband, that the plaint has thus become entitled to the Watan and other properties of the deceased Bhimappayya and was in possession and enjoyment thereof, that prior to the plaintiff's adoption, the two widows had applied to the Government for permission to

31
99

adopt the plaintiff but that the Government refused the permission without assigning any valid reasons, that this action of the Government was illegal in that the (1) proviso 3 of the Sanad issued under the Gordon Settlement does not prohibit an adoption from outside the family, that (2) as there were no other sharers in the Watan except the two widows who had applied for permission, there was no justification for the - Government to r-efuse permission, that (3) the widow had offered to pay Nazarana as per terms of the Sanad and that (4) there was a custom in the family to take a boy in adoption from outside the family and that the Government had once before sanctioned an adoption of an outsider into the family in the year 1848.

(2) The plaintiff further alleges in the plaint that after having refused permission to the adoption of the plaintiff, the Government passed an order, dated the 20th November 1931 in Resolution No. 5288/28, Revenue Department to the effect "That the Annigeri Deshpandegiri Watan lands should be - continued to the legal successor of the late Bhimappayya Chandrappayya Deshpande as Khalasa lands on payment of full assessment with effect from the year 1929-1930", that the latter portion of the order viz treating the watan lands as Khalsa and levying full assessment thereon was illegal and ultra vires and not binding upon the plaintiff for the following among other reasons:- (a) The Watan was an ancient one; the assumption of Government that there was a regrant after the introduction of the British rule was wrong. The Sanad affirmed old rights and simply dispensed with the services in lieu of payment of a fixed Judi. The Government had no right to - confiscate the Watan and convert watan property into Rayatwari lands (b) the Government has failed to appreciate the scope and significance of the Inam ~~Committee~~ Commission and the Gordon Settlement (c) the Government has not taken into consideration the

nature of the original grant (d) A regrant of the Watan was beyond the powers of the Government of Bombay (e) Government have not taken into consideration the condition of the Sanad, viz that the Watan and Cash Allowance should be continued forever to the lenial descendants of the Watan family on payment of fixed Judi provided the Watandar remained loyal to the British Government. The plaintiff being the adopted son of the late Bhimappayya Deshpande was a lieneal descendant of the Watan family (f) The first proviso of the Sanad has not been properly construed and it was wrong on the part of the Government to hold that there was non-fulfilment of the proviso of the Sanad.

(3) That the Revenue Officers of the Government have been levying full assessment on the Deshpandegiri Watan lands and have also stopped payment of Cash Allowance of Rs. 188 per year to the Plaintiff which was being paid to his adoptive father. Hence the suit to obtain the reliefs as above.

(4) The Government in its Written Statement at Ex. 238 contends that the suit was barred under article 120 of the Limitation Act, that the plaintiff-'s claim as regards the Cash Allowance was barred under sections 4 and 6 of the Pensions Act in the absence of a certificate from the Collector, that the plaintiff's prayer for a declaration that he was entitled to the refund of the moneys levied in excess of the Judi and to the payment of the Cash Allowance due prior to the date of suit was not maintainable without payment of the Court fee upon the aggregate amount, that the orders passed by the Government in G.R.R.D.No. 5288/28, dated the 20th November 1931 were valid and intra vires and binding upon the plaintiff, that the plff's adoption had taken place after the Government Notification, that at the date of the Notification there was no male heir lineal, collateral or adopted within the limits of the Watandar family, in

101 - 35

existence, that Government was therefore justified in resuming the Watan by the levy of full assessment under the terms of the Sanad, that for the same reasons, Government had also a right to stop payment of Cash allowance, that under the terms of the Sanad it was competent to the Government to refuse permission to the widows to adopt an outsider, that the rights of the Watandar are concluded by the Sanad granted under the Gordon Settlement, that the plaintiff cannot go behind the terms embodied in the Sanad, that plaintiff was not entitled to any of the relief's sought, that the suit should be dismissed and its ~~EEMX~~ costs allowed.

No written statement has been put on behalf of the deft No. 2. On the abovepleadings, the following issues were framed at Ex. 271.

Issues.

1. Was the Government legally bound to give permission for the adoption of the deceased plaintiff by Chandrabai, the widow of Bhimappayya Chandrappayya Deshpande ?

2. If not; was Government legally bound to recognise the adoption of the deceased plaintiff, a Parai, and to treat him as a successor in interest of the deceased Watandar ?

3. If so; was the Government Resolution R.D.No. 5288/28, dated 20-11-31 illegal and ultra vires and not binding upon the plaintiff, since deceased ?

4. Is plaintiff entitled to the declaration that he was entitled to hold the Watan landsin suit without payment of full assessment

4. Is plaintiff entitled to the declaration that he was entitled to hold the watan lands in suit without payment of full assessment and on payment of Judi only ?
5. Is the plaintiff's claim regarding the cash allowance maintainable without a certificate from the Collector under the Pensions Act ?
6. If so; is plaintiff entitled to a declaration that he was entitled to the Cash Allowance ?
7. Are plaintiff's claims for declarations sought barred by the law of limitation under Article 120 ?
8. Is plaintiff entitled to the injunction sought regarding the levy of full assessment on the plaint lands and the payment of cash allowance ?
9. Is plaintiff entitled to the declaration sought in paragraph 15 clause iv of the Plaint regarding the amount of the full assessment already recovered from him and the cash allowance which has become due before the date of suit ?
10. What relief is plaintiff entitled to and what decree should be passed ?

Findings.

1. Not bound.
2. No.
3. Not proved.
4. No.
5. Not maintainable.
6. Does not survive.
7. No; article 131 applies and the suit is in time.
8. No.
9. No.
10. Plaintiff not entitled to any relief; suit dismissed with costs.

Reasons.

5. The parties have led no oral evidence (Exs. 281

and 282). The Government have not disputed the correctness of the pedigree of the plaintiff's family given in schedule A attached to the plaint. Ex. 258 is a copy of the pedigree produced in the year 1887 immediately after the death of Chandrappaya in the matter of the heirship inquiry. The pedigree in schedule A is prepared on the strength of Ex.258. The last male holder of the vatan was Bhimappayya. He died on the 17th March 1929 leaving him behind two wives by name Chandrabai and Pushpavatibai. The plaintiff has been adopted by the senior widow Chandrabai on 16-6-1932. Chandrabai is now dead. Pushpavatibai has been impleaded as deft No.2. There is a registered deed of adoption passed by Chandrabai in the name of the deceased plaintiff (Vide Ex.280). Defendant No. 2 has also signed it in token of her consent. The original plaintiff died pending the suit and his natural son has been brought on the record as heir and legal representative. So far as the validity of the plaintiff's adoption is concerned, it is beyond dispute. The deft 1 has not disputed it in its written statement (Ex.238). The two widows applied on 4-12-1929 to the Government of Bombay through the Collector, Dharwar, for permission to adopt the plaintiff who is admittedly a Parai i.e. stranger to the Watandar family. In this application they made the following statements:

6 "The petitioners are the widows of Bhimappaya Chandrappayya Deshpande who was the sole holder of the Paragane Deshpandegiri watan of Annigeri and 8 neighbouring villages and who died on 17th March 1929 without issue.. The petitioners are his heirs and now the sold sharers of the said watan. The petitioner No. 1 Chandrabai is the senior widow ..... Before his death he (Bhimappaya) expressed a desire that a suitable boy should be adopted to him after his death and his family continued. In the year 1848 and once before, the

family was continued by adoptions, permission having been obtained for the adoption of 1848. The family of Bhimappayya is a respectable historic and ancient family. It enjoyed the watan since the time of the old Bijapur Kings. After the extension of the British rule to this province, the Deshpandegiri watan was settled under the Gordon Settlement system and a Sanad issued. ..... In pursuance of Bhimappayya 's desire to adopt a suitable boy, the petitioners have fixed upon one Ajjappa, the brother of petitioner No. 1 Chandrabai, that view, they have married him to the sister of petitioner No. 2. ... Ajjappa is a stranger to the Watan family of Bhimappayya..... Under clause No. 3 in the Gordon Settlement Sanad granted to the family of the petitioners' husband, permission of Government is necessary for the adoption of a boy outside the watan family. The only sharers in the Watan now are the petitioners. The adoption within the watan family is now impossible. The ancient and historic family of Bhimappayya can be continued only by adoption of a boy outside the family .... The petitioners, who are the only sharers in the watan, hereby beg to approach the Government through the Collector for permission to adopt a boy outside the watan family under clause 3 of the Deshpandegiri Sanad granted to their family under the Gordon Settlement. They are prepared to-pay hereafter annually Nazarana of one anna in a rupee of the total emoluments of the Watan."

7. The Collector, in forwarding the application to the Commissioner, recommended that the sanction be accorded to the adoption of A jjappa by the applicants. The Commissioner in submitting the papers to the Government observed as follows:- "The Commissioner recommends that as a special act of grace - -

105 + 5 37

permission may be accorded to the widows of the deceased Bhimappayya Chandrappayya Deshpande of Annigeri to adopt Ajjappa who comes from outside the limits of the watan family on payment of the annual Nazarana of one anna in each rupee of the total emoluments of the watan from 17th March 1929 ....

It may be noted that in 1848 Government had once -- permitted the adoption of an outsider in this family (Vide Government Memorandum No. 7515, Territorial Department - Revenue - dated 2nd December 1848) in similar circumstances. From the papers it appears that there are no sub-sharers in the watan and so there is none in the watan family who would be put to loss by the grant of such permission."

8. The Government sent back the papers to the Commissioner to consider the question in the light of Government Resolutions, Revenue Department, No. 9234/24 of 25-7-1928 and 20th November 1928 wherein instructions were laid down regarding the treatment of Non-watandar adoptees in respect of Non-service Watan lands, villages and allowances. The Commissioner re-submitted the papers to the Government and in doing so, made the following observations:- "From the papers of this case, it appears that no male members in the watan family is now in existence. The petitioners i.e. the two widows of the last male holder of the Watanviz. Bhimappayya Chandrappayya, have only a life interest in the Inam lands and cash allowances held by their husband. They are not sharers in the Watan and consequently the watan has practically lapsed to Government on the death of Bhimappayya without any heir of the kind mentioned above. As Bhimappayya did not ask for such permission, the petitioners, widows can scarcely be said to have any right to do so. It is thus not at all necessary for Government to grant the permission asked for. They can grant it merely as a matter of grace, if they chose to do so ..... Thus the main point

for consideration in the present case is whethere there are any special circumstances justifying the grant of concession asked for by the partners. One of the main grounds advanced by the petitioners for the grant of the concession is that a similar concession was granted to the family in 1848. It is true that the permission to adopt an outsider was in the case of this family granted by Government in 1848 to the then holder of the watan, without payment of Nazarana. It may, however, be noted that this Deshpande watan was a service watan in 1848 and the restriction about adoption of outsiders imposed by the Sanad issued under the Gordon Settlement to which the Watan subsequently subjected was not then in force. The reasons which induced Government in 1848 to grant permission to the adoption of an outsider into this family do not therefore hold good in these days ..... It would therefore be better for Government to look ahead and to restrict such permission to cases of specially important families and not to grant it in the case of ordinary Deshmukhs, Deshpandes, Desai etc. So far the present caseis concerned, the Commissioner - considers that it does not come in the former catagory."

9. The Government resolution runs as follows;- Government regret that they are unable to grant permission to the widows of the last Bhimappayya Chandrappayya Deshpande to adopt a boy from outside the Watan family (Vide Ex. 278). Then the Collector reported on the 28th ~~Sept~~ September 1931 to the Commissioner that in view of Government Resolution, R.D., No. 5288/28, dated the 28th October 1930, the Annigeri Deshpandegiri Paragane Watan comprising lands at Annigeri and the neighbouring villages in ~~Na~~ Navalgund Taluka held by the deceased Bhimappayya Chandrappayya lapses to Government under condition No. 3 of the conditions of the Sanad for want of male heirs in the watan family and requested him to move Government to accord their sanction to the

ra 7+5/39

levy of full assessment from 1929/30 on the lands comprisi.. the said watan and to continue them to the legal successors of Bhimappayya as Khalsa lands on payment of sull assess--ment as it was done in the case of the Nipani Deshgat. The Government resolved on the 20th November 1931:- The proposal made by the Collector that the annigeri Deshpande watan lands should be continued to the legal successors of the late Bhimappayya Chandrappayya as Khalsa lands on payment of full assessment with effect from the year 1929-3 which is recommended by the Commissioner, S.D., is sanctioned (Vide Ex. 279).

10. It was after these resolutions of the Government were issued, that the adoption of plaintiff was made on 16-6-1932. On 28th February 1932 the Collector ordered the Mamlatdar of Navalgund to recover the Nuksan (difference between assessment and Judi) over the Annigeri Deshpande Paragana watan lands for 1929-30 and 1930-31 and to make a note in the village records that the lands have been converted into Khalsa from 1929-30 on leavy of full assessment (Vide Ex. 265). The total assessment of the Paragana Watan lands comes to Rs. 5094-4-0 and the Judi payable as per terms of the Sanad to Rs. 1385-9-0. The Nuksan i.e. difference comes to Rs. 3708-11-0. On 12th June 1932, the two widows made an application to the Prant Officer for payment of this amount by instalments. The Mamlatdar recommended four equal annual instalments (Ex. 267). It was ultimately accepted by the Government who issued a resolution on 20th December 1932 in the following words:- "The Collector's recommendation to allow the widows of the deceased holder Bhimappayya to pay off the arrears of Nuksan for the years 1929-30 and 1930-31 amounting to Rs. 7417-6-0 by four annual equal instalments is sanctioned (Ex. 268). The first instalment of Rs.1854-5-0 was recovered in July 1933 from the plaintiff, since

deceased (Vide Ex.269). The latter paid the next two instalments in 1934 and 1935. The last instlalment was to be paid in 1936; but he applied for time till March 1937 and Government granted time accordingly (Ex.270). The last instalment was paid on30-3-1937 and so the papers were filed (Ex.270).

11. It is clear from what has been stated above that the Government has been levying full assessment since the year 1929-30 and it is being paid. With this back-ground let us consider the issues that arise in this suit. The first point raised by the plaintiff is that the refusal of the Government to accord sanction to his adoption was illegal. Ex. 246 is a copy of the Sanad issued under the Gordon Settlement. The form of the Gordon Settlement Sanad is given on pages 266-267 of Phadnis Watan Act 1936 Edition. It is to the following effect :-

12 'And whereas the holders thereof have agreed to pay Government a fixed annual payment in lieu of service:- It is hereby declared that the said lands and cash allowance shall be continued hereditarily by the British Government on the following conditions::- That is to say, the said holders and their heirs shall continue faithful subjects of the British Government, and shall render to the same the following fixed yearly dues ---- in consideration of the fulfilment of which conditions:-

1st:- The said lands and cash allowances shall be continued without demand of service, and without increase of land tax over the above fixed amounts and without objection or question on the part of Government as to the rights of any holders thereof, so long as any male heir to the Watan, lineal, collateral, or adopted, within limits of the watandar family, shall be in existence.

2nd:- No Nazarana or other demand on the part of

Government will be imposed on account of the succession of heirs, lineal collateral or adopted within limits of the Watandar family and permission to make such adoption need not hereafter be obtained from Government.

3rd:- When all the sharers of the watan agree to request it, then the general privilege of adoption at any time any person, (without restriction as to family) who can be legally adopted, will be granted by Govern--ment to the watan on payment from that time forward in perpetuity of an annual Nazarana of one anna in each rupee of the above total emoluments of the watan.

13. Now section 15 of the Bombay Hereditary Offices Act (Act iii of 1874) read with rule No. 2 of G.R.No. 10336 of 1908 make the conditions in the settlement binding and the watan continuable according to the terms of the settlement. In 15 Bombay page 13, Sir Charles Sargent, C.J. observes as follows on page 23:- 'What is termed a Gordon Settlement was an arrangement entered into in 1864 by a Committee, of which Mr. Gordon, as Collector, was Chairman, acting on behalf of Government - with the watandars in the Aouthern Maratha Country by which Government relieved certain watandars in perpetuity from liability to perform the services attached to their offices in consideration of a Judi or quit-rent charged upon the vatan lands. Any doubt there might have been as t the binding legal effect of these settlements either a regards Government or the watandars or their successor was set at rest by section 15 clauses 2 and 3 of Act iii of 1874, which provides that they should have the same force as if made under section 15 of the Act which expressly contemplates s ttlements being made by the Collector'. It is therefore not open to the plaintiff to go behind the terms of the Sanad granted to his ancestor. The first condition of

the Marathi form of the Sanad runs as follows:-

जो पर्यंत वतनाचा पुरुष वारस म्हणजे सिध्दा किंवा तेह।
अगर वतनदार घेरा घ्यावैकि दत्तक असा कोणी अद्यैत
तो पर्यंत चाकरि न घेता व वरतिलि लिहिले कार्य वजे
पेक्षा अधिक काहि न मागता व उपभोग करीत राचेईल।
विणयि काहि हरकत किंवा शंकाहि न घेता सदरहू जमीनी
वतनचे मनूका सरकारा तेनचा तो विषय जातीक

14. In this case it is an admitted fact that the death of Bhimappayya on 17th March 1929 there was no male member left in the watandar family. The two widows of Bhimappayya have made this fact clear in their application to the Government for permission to adopt the plaintiff (Ex. 259). Under condition I of the Sanad, the watan lands and cash allowance 'shall be continued ---- so long as any male heir to the watan, lineal, collateral or adopted, within the limitsof the watandar family, shall be in existence'. Admittedly there was no such heir left within the ambit of the watan family upon the death of Bhimappayya in 1929. The third condition only comes into play. "When all the sharers of the watan agree to request it, then the general privilege of adopting at any time any person (without restriction as to family) who can be legally adopted, will be granted by Government to the Watan". By no stretch of imagination, it can be said or argued that the widows of Bhimappayya were the sharers in the watan. As pointed out by the Commissioner in his Memorandum to the Government, they had only a life interest in the watan Inam lands and cash alloowances held by their husband. They were not sharers in the watan. They had no right in the watan independentl y of their husband. As a matter of fact the deceased Bhimappayya was the sole watandar and there were no sharers in it. This is common ground botn to the plaintiff and the Government (Defendant No. 1). If Bhimappayya himself had sought permission, it would have been a different thing.

Government would thenhave been bound to give the necessary sanction. But Government were not bound to accord sanction to the adoption of a Parai by the widow of the last male holder when there were no male heirs left in the watan family. The first condition in the Sanad therefore came into play and as there was no male heir to the watan, lineal, collateral or adopted, within the limits of the watandar family, left on the death of Bhimappayya, the watan lapsed to the Government and was liable to be resumed by the levy of full assessment upon the Vatan lands. This is what the Government have done and there is nothing illegal or improper in what they have done. It is no doubt true that in the year 1848 the Government sanctioned the adoption of an outsider under similar circumstances but that was ~~a time~~ at a time when there was no restriction about adoption as the one imposed by the Sanad granted under the Gordon Settlement.

15. So the concession granted in the year 1848 cannot serve as a precedent to the absolute right of adoption of a Parai by the members of the plff's family. It is alleged in the plaint that the plff's family have acquired that right by custom. There is no evidence as to the acquisitionof such a right by custom nor such right can be claimed in contravention of the terms of the Sanad which governs the rights and liabilities of both the Government and the watandar. None of the rulings relied upon by the learned pleader for the plaintiff supports the plea put forward by him thatGovernments' refusal to sanction the plff's adoption was illegal. The facts in 1 Bombay High Court Reports 22 (Vishnu Trimbak v. Tatia alias Vasudev Pant by his son and heir Lamkrishna) were as follows:- An Inamdar having granted several mortgages upon his Inam lands died. The right to hold the lands rent-free was ruled by Government to have ceased upon his

death, but the lands were continued to his representatives subject to the payment of assessment under the Government circular of 1854. The mortgagee obtained a decree against the widow and adopted son of the mortgagor as heirs. After this the Inam Commissioner declared the Inam lapsed for want of heirs of the body of Bhaskar (mortgagor) and the Inam was resumed by Government The Collector made a fresh grant of the lands to the adopted son, Janardhan under the Revenue Survey Tenure and in afcordance with rule 6 of the Government Circular No. 2449 of 1854 which directs thatif the claim of an Inamdar who is in occupation of land, be disallowed, he is nevertheless to be permitted to continue in possession so long as he shall pay the full assessment imposable on the lands as Khalasat land. Assignee of the lands from Janardhan (adopted son of Bhaskar) filed a suit to avoid the attachment taken out by the mortgagee. The District Judge of Poona non-suited the plaintiff who preferred an appeal to the High Court. It was contended in the High Court 'that the legal effect of the resumption of the lands in 1855 as a lapsed Inam was to destroy altogether, the estate in them which had been vested in Bhaskar Joshi, and consequently to render inoperative, from that date at least, any specific incumbrances created by him upon the lands; and secondly that by the Collector's grant to Janardan in 1855, after resumption, a wholly new interest in the lands was given to him by the paramount power and that the interest so acquired was not liable in his lands to satisfy the specific charges created by Bhaskar Joshi "Both these contentions were negatived and the decree passed by the District Judge was affirmed. I fail to understand in what way this ruling is relevant for the decision of the question involved in this suit. It may be an authority for the preposition that

21-113
45

resumption means levy of sull assessment and not actual recovery of possession of the lands resumed.

13. In 9 Bombay 419 (Gangabai v. Malappa) it was held that ' on the resumption of an Inam the Inamdar's right to exemption from the payment of the Government assessment ceases and the Inamdar becomes liable to pay such addessment. But all his other rights remain unaffected and therefore those who were his tenants before the resumption do not thereby cease to be so and can be ejected if they are not permanent tenants, or are not otherwise entitled to remain in possession '. I have already referred to 15 Bombay 13 where Sargent C.J* explained the implication of the terms 'Gordon Settlement'. In 27 Bombay 75 (Balaji Ramachandra Deshpande v. Datto Ramchandra) it was contended that the adoption of a person who did not belong to the vatandar family in respect to whose vatan a Sanad was granted under the Gordon Settlement, was invalid. But Sir Lowrence Jenkins C.J. held that that the Sanad did not prohibit such an adoption and that the adoption in question was valid. But he took care to observe towards the close of his judgment as follows;- 'But in so holding I do not mean to say that that the tenure of the lands would be prolonged or the rights of Government would be curtailed in case the body of the watandars were to die out and the plaintiff or his successors were alone left to claim the watan lands. As to this I would repeat what was said in Ramachandra's case (7 Bom. H.C. reports 26):- We consider that the result of the suit will not affect the interest of the Government and that we should, therefore, confine ourselves to the point at issue between the parties who are before the Court'. The Government was not a party to the suit and that is the reason why the concluding words of the judgment quoted above were used by His Lordship. The last case relied upon by the learnedpleader for the plaintiff was the Girsagar Deshgat case (39 Bom.

L.R. 851). In that case the Government had resumed possession of the whole of the vatán property and it was held by Beaumont C.J. that 'Government have no right to resume possession of the property and that is the only point with which we can deal in this appeal (Vide page 863). The Girsagar Deshgat property was not subjected to the Gerdon Settlement. The Sanad given was not in the form in which the Sanad was issued in this case. The history of that case is given on pages 851-852 and the Sanad granted has been reproduced on page 852. It is as follows:- 'The said lands and cash allowances shall be continued in lineal succession from generation to generation by the British Government under the following conditions. These conditions are: The said persons in enjoyment and their heirs shall be obedient to the British Government and act faithfully and honestly and shall go on paying to Government permanently every year amounts as mentioned below:- " ----. The amount of the agreed assessment was then stated, and then there was a provisi, which was in the following terms. "So long as there are male heirs i.e. direct or indirect of the vatandar so long as there is any person adopted inthe watandar family, the said lands and cash allowances shall be continued by Government without taking service and without demanding anytying more than the above mentioned fixed amounts and without any objection or question as to the rights of person in enjoyment.'.

17. The last male holder of the vatan was one Bhimrao Desai. He adopted the plaintiff who was his daughter's son in 1909 without the consent either of Government or of the other collateral heirs. Bhimrao died in 1918. After his death, on Government refusing to recognize the plff's adoption, the plaintiff applied to the Government for the grant of ex post facto

23-145
47

sanction to his adoption by Bhimabai and in the alternative, if that sanction was not given, he requested that the watan might be resumed merely by the levy of full assessment on the lands but that he should not be evicted from them. Both these requests were turned down, and the Government then passed orders resuming possession of the land and cash allowances appertaining to the vatan on the ground that it automatically lapsed to Government for want of proper heirs to inherit it under the specific conditions of the Sanad governing the Watan. The Plaintiff thereupon claiming to be the Watandar of the Watan filed a suit against the Government for a declaration that the orders passed by Government resuming possessionof watan property were illegal and ultra vires. His Lordship the Chief Justice observes as follows on page 863:- ' We are bound to hold that the plaintiff as a validly adopted son of Bhimrao is the Watandar as between himself and the collateral heirs of Bhimrao. Government may or may not have a right under proviso I in the Sanad to demand service or further assessment, That question has not been urged and is not, I think, open on this appeal, because the plaintiff originally asked Government to deal with him on that footing. He was willing to pay full assessment. But Government insisted on their right to resume possession of the whole of this property, which I may say, is extensive and comprises something like 14000 acres of land. In my opinion Government have no right to resume possession of this land, and that is the only point with which we can deal on this appeal.' I do not think that this ruling helps the plaintiff in any way. I have referred to all the rulings relied upon by the plff's pleader in support of his argument that Government's action in refusing to accord sanction tothe plff's adoption was illegal and ultra vires..

18. It is true that in some cases Government have recognised ex post facto an adoption made by the widow of the last male holder of the vatan. But that was merely a

a matter of grace and not a matter of right. These cases have been mentioned in Phadnis's vatan Act 1936 Edition, pages 233-234. K, a Watandar Deshmukh died in 1875, Government sanctioned an adoption of an outsider by his widow, in 1876 as a special act of grace on account of the valuable services rendered by K and remitted also, the Nazarana of one anna in the rupee (G.R.No. 4092 of 1897). An adoption of a stranger was made by the widow of a Deshmukh after his death. It seems that there was no other male heir within the limits of the Deshmukh's family but the widow was recognised as heir during her life time. After referring to the fact that if the Deshmukh had applied duringhis life time then Government were bound to grant it under the third condition, the Commissioner in recommending ex post facto recognition observed, 'The above recommendation is made in consideration of the fact that the Deshmukhs are an old and well known Maratha family and in view of the fact that, if the vatan be resumed the adopted son will have no means of subsitence. Government will take a liberal view of their recently declared policy to maintain the dignity and position of the old Maratha Aristrocracy'. Government as an act of grace, recognised the adoption on payment of Nazarana and intimated that the effect of the order was to confer a general power of adoption outside the family (G.R.No. 5988 of 1908). In G.R.No. 11 028 of 1909 Government observed, whilst giving expost facto sanction toadoption outside the family, that there was no legal objection to that procedure, but that that it should not be taken as a precedent and Government could not promise to grant expost facto the privilege of adoption.

Mr.Phadnis observes as follows on page 234 upon the above mentioned resolutions of the Government:-

17
-25-49

'If there are other sharers within the limits of the watandar family then even the granting of the privilege expost facto would require the consent of all others under condition No. 3 of the Sanad. But if there is only one sharer, then his requisition will have to be granted, because he being the only sharer the question of the consent of the others does not arise. In case the last sharer has died without obtaining such a privilege previously to his demise then granting of the privilege expost facto in such a case will mean the regranting of the Vatan on the original terms to the heirs of the original Vatandar because the vatan will have already lapsed to Government on the death of the last male sharer".

19. Again on page 236 Mr.Phadnis observes:- 'An adoption of a duaghter's son cannot operate under the terms of the Sanad so as to effect the vatan because he is not a male member of his natural grand-father's vatan family. So, also is an adoption of an outsider to the vatan family without the previous general power to adopt without restriction as to family under the third condition. Therefore, where there is no othermale number except such adopted person or his descendants in the vatandar family, the vatan lapses to Government under the first condition in the Sanad. But the lands are continued in the possession of the heirs of the last male holder on condition of their paying full assessment on such lands. Oands were resumed on failure of male heirs in the Watandar family, except the adopted son who was not a member of the vatandar family, but possession was continued to such adopted son on condition of his paying full assessment on such lands (G.R.No. 10256 of 1907). Where there was no male heir other than the non-vatandar adoptee, the vatan was resumed but the possession of the lands was continued on payment of full assessment to the heirs of the deceased last male holder (G.R.No. 6603 of 1917)'.

20. What the Government have done in this case is to follow the Government Notification mentioned above. Government have not and are not interfering with the plff's possession of

the lands. They are not challenging the validity of his adoption. What they have done is to levy full assessment upon the lands and to recover the same from the date of the death of the last male holder of the vatan. Plaintiff has come in adoption after the refusal of the Government to his proposed adoption by the widows of Bhimappayya Deshpande and after the resumption of the vatan by the Government by the levy of full assessment. He knew or must have known what his legal position would be after the adoption in view of the two Notifications of the Government refusing permission for his adoption and resuming the vatan by the levy of full assessment. It appears that both the widows of the last male holder and the Plaintiff accepted the legal position and implications of the Government resolutions and accepted the same by requesting the Government for payment of the difference between the full assessment and Judi for the years 1929-30 and 1930-31 by instalments. Government granted their request and allowed the money to be paid by 4 annual instalments. Although no question of estoppel arises, the plff has been too late in filing this suit.

21. I record my finding in the negative on issue 1. I have shown that the Government was not bound to grant ex post facto sanction to the plff's adoption although it could have done so as a matter of grace as it has done in some cases. This disposes of issue No. 2. The Government Resolution No. 5288/28 dated 20-11-1931 is therefore perfectly legal and intra vires. It follows from this that the plff is not entitled to the declaration sought regarding the Government Notification.

22. Now, coming to issue No. 5, the plff's claim regarding the cash allowance is clearly barred under sections 4 and 6 of the Pensions Act (India Act xxiii of 1871). The Plaintiff had applied to the Collector for a certificate under s. 6 of the Pensions Act but his

5/125-7

application has been refused (Ex. 260). Without the certificate, this Court cannot take cognizance of any claim regarding the cash allowance. It is not for this Court to go into and consider the reasons which weighed with the Collector in refusing the certificate. They may be good or bad. Moreover, plff's adoption not having been sanctioned by the Governmentunder condition iii of the Sanad, he cannot be regarded as a malex heir to the watan and therefore not entitled to the cash allowance under the terms of the Sanad.

23. Now coming to the question of limitation, it is clear that either article 120 or article 131 of the Limitation Act applies to the facts of this case. The suit has been filed on 20-1-1944. The main prayer in the suit is for a declaration that the Government Resolution No. 5288/28 dated the 20th November 1931 was null and void and not binding upon the plaintiff. The other prayers are mere ancilliary to and flowing from it. If article 120 is made applicable, the suit is clearly barred. But if article 131 or article 144 is applied it will be in time if we exclude the period of two months covered by the notice under section 80 of the C.P.Code. I am inclined to hold that article 131 applies rather than article 120 to the facts of this case. I rely upon the rulings in 36 Bom.L.R. 551, A.I.R. 1937 Madras 303, I.L.R. 1941 Madras 587. I hold that the suit is in time.

24. Plaintiff has asked for a declaration that he was entitled to recover from the Government the arrears of cash allowance from 1929-30 to the date of suit and also the excess amount of assessment over the Judi recovered from him from the year 1929-30 onwards. Such a declaration is clearly not tenable. Plaintiff was bound to claim the amount which he says has been illegally recovered from him and pay advalorem Court fee upon the

same. He has not done so. He is therefore not entitled to the declaration embodied in issue No. 9. Besides in view of my findings upon the other issues, Plaintiff would not be entitled to the declaration sought.

I record my findings as above upon the issues framed and pass the following order.

Order.

Suit dismissed with costs. Deft No. 1 may recover their costs from the Plaintiff. Defendant No. 2 to bear her own costs, if any.

17-12-1945. sd. M.S.Bagali.
Civil Judge, Senior Division.

17
29
53

Ex. 285

D E C R E E.

In the Court of the Civil Judge Senior Division,

At Dharwar.

Long Cause Civil Suit No.20 of 1944.

1. Chandeppayya Bhimeppayya Deshpande, Caste Jain, age 31, Occupation Vatani Vahivat and Agriculture, of Annigeri, Taluka Navalgund, District Dharwar. Since deceased by his heir son--

1A. Bhimeppayya Chandeppayya Deshpande, age 11, occupation student minor by his next friend mother Chitrawatibai Bhratar Chandeppayya Deshpande of Annigeri Taluka Navalgund Jain, Age 28, Household work. ... ... Plaintiff.

Against.

1. The Government of Bombay, Bombay.

2. Pushpawatibai Kom Bhimeppaya Deshpande, Jain, age 43, household work of Annigeri Taluka Navalgund District Dharwar. .... Defendants.

Suit presented on 20-1-1944.

Suit filed on 20-1-1944.

Claim Rs. 605/-.

In this the Plaintiff above named begs to state as under :-

1. Pedigree of the Plaintiff's family is hereto appended as Schedule A.

2. The Deshpande Watan of Annigeri and the neighbouring village is an ancient Watan. The Plaintiff's family enjoyed the Watan since the time of the Mohomedan Kings of Bijapur. This Watan was acquired by the projenitor of the family Dharmareddyya shown in the pedigree. After the extension of the British rule to this part of the country

the family enjoyed the watan of Deshpandegiri. They held these lands of Deshpande Watan without payment of any assessment during this period. Besides Deshpande Watan the family owns and enjoys the Kulkarniki Watan Hak in three villages around Annigeri, namely, Majjigud, Kondikop, -- Saidapur and Annigeri itself and lands of Kulkarniki Watan in Majjigud and Kondikop.

3. In the year 1863 under the Gordon Settlement a Sanad was issued by the British Government relieving the then Watandar from service on payment of fixed Judi. The Deshpandegiri watan consists of the watan land in Annigeri and Bhadrapur and Cash allowance of Rs.12B/-.

4. The adoptive father of the Plaintiff Bhimappayya Chandappayya Deshpande died on 17th March 1929 leaving behind him his two widows (Chandrabai (adoptive mother of Plaintiff) and Pushpawatibai Defendant No.2. The senior widow according to the desire of late Bhimappayya -- Deshpande adopted the Plaintiff on 16-6-1932 to her deceased husband. Thus Plaintiff has become owner to the Deshpandegiri Watan consisting of lands at Annigeri and Bhadrapur and Cash allowance and also other properties of late Bhimappayya Deshpande and as such he is in possession of all the properties of late Bhimappayya Deshpande.

5. Before Plaintiff was adopted by the senior widow of late Bhimappayya, namely the two widows of Bhimappayya, namely, Chandrabai and Pushpawatibai applied to the Government to give permission to adopt the Plaintiff. But their prayer was refused by the Government. The -- Plaintiff contends that the refusal to give permission was illegal on the following among other grounds :-

(a) The proviso No.3 of the Sanad issued to the Plaintiff's family under the Gordon settlement does not restrict that the Desh-pandegiri watan family of the Plaintiff should adopt from the watan family of the Plaintiff alone. It allows the adoption of an outsider in the family.

(b) The restriction put in by subsequent portion of the same clause namely, there should be an application by all the share holders of the watan is only to safeguard the interest of shareholders, if any, and as there are no sharers in Deshpandegiri watan of Annigeri the widows as representing the estate of the deceased applied for such permission.

(c) The widows of late Bhimappayya sufficiently complied with this

173
31
55

provided when they applied for permission and offered to pay Nazarana and as such the Government was bound to give sanction to the adoption of the Plaintiff.

(d) The Annigeri Deshpandegiri watan family has a right according to the custom of the family to take the boy in adoption from the outside and this has been recognised by the Government. Government sanctioned the adoption of an outsider in the family in the year 1848 (Vide Government letter Revenue Department No. 7515 dated 2nd December 1848). Thus the Plaintiff's adoption is legal under the proviso No.3 of the Sanad and as such he is entitled to hold the Deshpandegiri watan lands, and cash allowance on payment of Judi only according to the terms of the Sanad.

6. But the Government after refusing permission to the adoption of the Plaintiff have passed an order dated 20th November 1931 -- Resolution No.5388/28 Revenue Department " That the Annigeri Deshpandegiri Watan lands should be continued to the legal successor of late Bhimappayya Chandappayya Deshpande as Khalasa lands on payment of full assessment with effect from the year 1929-'30" The latter part of the order, namely, of treating Watan lands as Khalasa lands on payment of full assessment is void as being ultra vires and illegal and not binding on the Plaintiff for the following reasons

(a) The Government has not considered the ancient nature of the Watan and proceeded on the wrong assumption that a re-grant was made by the British Government. The sanad issued by the Government affirms the old rights of the family and it embodies a new agreement regarding the service of Deshpandes to the Government. The Government has given up the rights of taking service from the Deshpandes on their agreeing to pay a certain sum of Judi to the Government per year.

(b) The nature of the original grant is not taken into consideration.

(c) The Government has failed to appreciate the proper scope and significance of Inam Commission and Gordon Settlement.

(d) Government proceeded on the assumption that the settlement arrived at between Government and Watandar as re-grant by the British ~~Xxx~~ Government.

(e) The case of re-grant is repugnant to the wording of the sanad issued to the Plaintiff's family.

(f) A re-grant was beyond the powers of any Gordon Committee or the Government of Bombay.

(g) The Government ought to have considered that the original nature of the watan continued unaltered.

(h) Government has not taken into consideration the condition of the Sanad, namely, the watan and cash allowance should be continued forever to the lenial descendants of the Watan family on payment of fixed Judi and the Watandar being loyal to the British Government. Plaintiff being adopted son of late Bhimappayya Deshpande is a lenial descendent of the watan family is not taker into consideration.

(i) The first proviso of Sanad was not properly construed.

(j) Government wrongly decided that there was non-fulfilment of the proviso of the Sanad.

(k) The order of treating Watan lands as Khalasa lands and levying full assessment is not justified under any A law.

(l) The Revenue Authorities have passed the order exparte against the Plaintiff and they are enforcing the order against the rights of the Plaintiff.

For these grounds the order dated 20th November 1931 ultra vires and not binding on the Plaintiff.

7. The Revenue Authorities are levying full assessment on the Deshpandegiri watan lands and also have stopped payment of cash allowance to the present Plaintiff though he is legally entitled to cash allowance. -- Hence the present Plaintiff has brought this suit for declaration that he is legally adopted son of late Bhimappayya Chandappayya Deshpande and as such the watandar of Deshpandegiri Watan of Annigeri; that the order leving the full assessment on the watan lands and declaring the watan lands as Khalasa is illegal, ultra vires and not binding on the Plaintiff and for declaration of his title to hold watan lands and cash allowance according to the terms of the Sanad and other incidental reliefs.

8. The cause of action arose on 16-6-1932 the date on which the Plaintiff was adopted to late Bhimappayya Deshpande within this -- jurisdiction of the Dharwar First Class Court.

9. The valuation of the Court fee is as below :-

(a) for declaration that the order of Government in G.R.No.5288/28 dated 20th November 193_ is null and void being illegal and ultra vires and not binding on Plaintiff is valued at Rs. 200/-.

(b) Declaration that the plaintiff is entitled to hold the said land without payment of full assessment and to cash allowance as the heir of the deceased Bhimappayya Deshpande is valued at Rs.___/-.

(c) Permanent injunction to defendant No.1 not to levy the full assessment on the said land and to pay cash allowance is valued at Rs.5/

d) Declaration that the plaintiff is entitled to all the amount realised by office of defendant No.1 and credited in Government Treasury in excess of the judi payable to the Government and cash allowance accrued till the date of suit is valued at Rs.200/-

Thus the Court fee is paid on Rs. 605/- i.e. Rs. 56-12-0 only.

For the purpose of jurisdiction and pleader's fees the suit is valued at Rs. 200/- only

10. Defendant No.2 is the widow of the deceased Bhimappayya Deshpande the adoptive father of the Plaintiff. The order complained against by the Plaintiff is made against her and the deceased adoptive father of the Plaintiff. So she has been made a party to the suit.

11. Notice under section 80 of C.P.C. has been given to the Collector of Dharwar on 18-11-1943.

12. The certificate under section 5 of the Pension Act is necessary for the prayer made by the Plaintiff. In order to avoid objection on the part of the Defendant No.1 Plaintiff has applied to the Collector of Dharwar to issue a certificate under the said Act. The matter is pending. The Plaintiff will produce the certificate when it is received by him.

13. The lands have been declared as Khalsa lands and the assessment levied on them are set out in schedule

14. The cash allowance pertaining to the Watan is set out in schedule

15. The extracts of R of R relating to the lands in schedules together with the list of documents relied on by the Plaintiff are herewith submitted.

16. The Plaintiff's prayer is as follows :-

( ) That the declaration that the order passed by the Government

of Bombay in their Resolution [illegible] November 1931 is null and void as being illegal [illegible] viras, and not binding on the Plaintiff.

(ii) It should be declared that Plaintiff is legally adopted son Bhimappayya Deshpande is entitled to hold Watan lands without payment of full assessment [illegible] allowance.

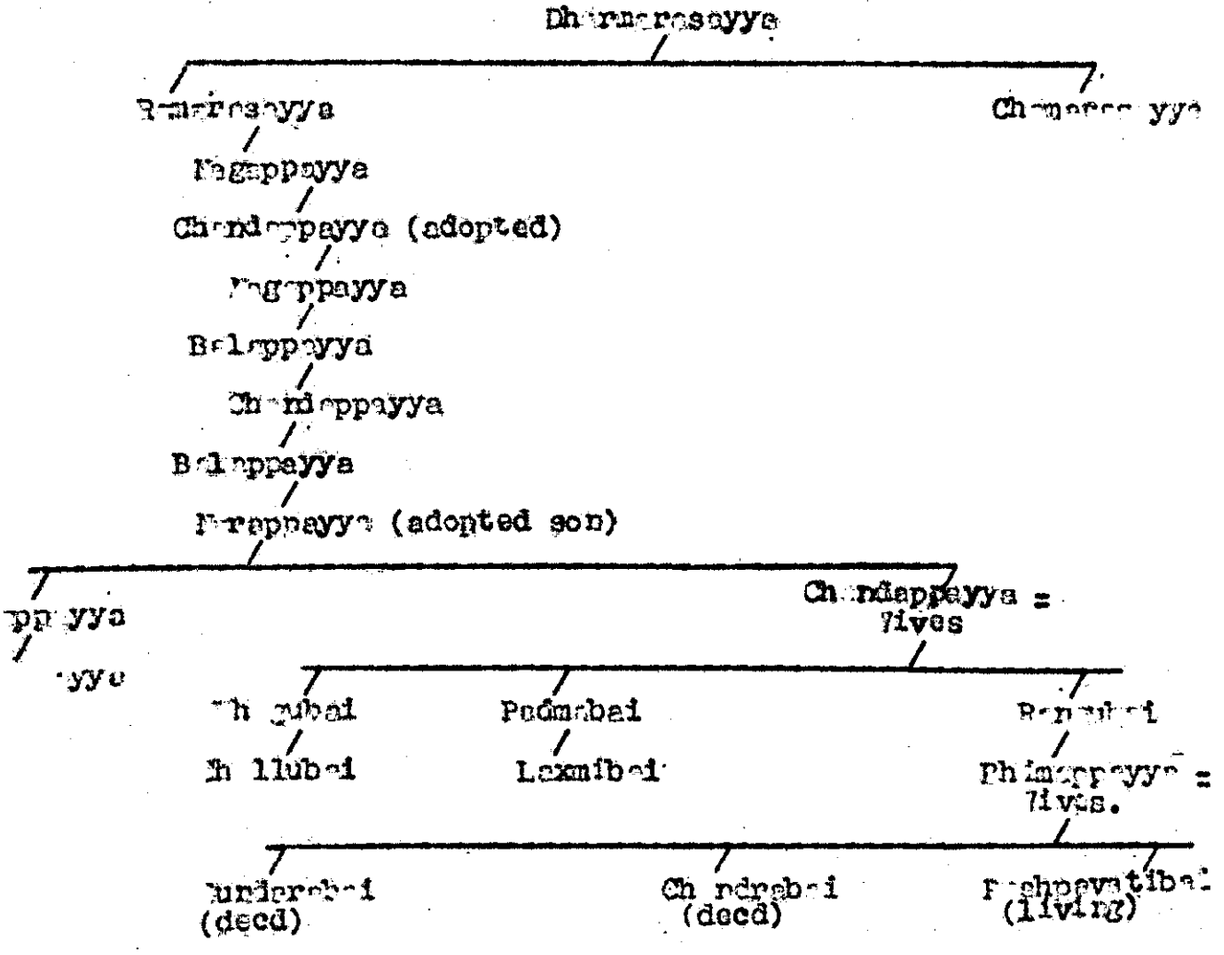
(iii) A permanent injunction to restrain Defendant No.1 and the officers and agents of Defendant No.1 not to levy full assessment on the Watan lands of [illegible] of Annigeri of the Plff and to pay each allowance from the date of the suit.

(iv) It should be declared that the Plaintiff is entitled to the amounts collected by the officers of Defendant No.1 in excess of the judicial and the each allowance held [illegible] from the date of adoption of the Plaintiff to [illegible] all future accretions with proper interest thereon.

(v) For the costs of the suit from Defendant No.1.

Schedule A.

Genealogy of the family of Deshpande of Annigeri Taluka Navalgund, District Dharwar is as under :-



59 127 35

Schedule B.

1. Land situated at Annigeri village in Navalgund Taluka of the Dharwar District.

Serial No.	Survey No.	Area.	Assessment.	Approximate value.
1.	8/1	1-39 P.K. 1	2-2-0	
2.	8/2	2-17 P.K. 4	2-9-0	
3.	8/3	5-0 P.K. 2	5-5-0	
4.	9	10-24 P.K. 9	13-0-0	
5.	60	7-12	12-0-(	
6.	73	14- 2	25-0-(	
7.	74	3-39	5-0-0	
8.	75	8-11	17-0-0	
9.	80	1-34	26-0-0	
10.	80/1	13-30	17-0-0	
11.	81/2	11-19	14-9-0	
12.	86	4-13-	5-0-0	
13.	87	23-37	31-0-0	
14.	119	19- 0 P.K. 20	25-0-0	
15.	120/1	0-16	0-6-0	
16.	120/2	0-17	0-6-0	
17.	304	11-22	24-0-0	
18.	305	15- 5	31-0-0	
19.	323	21- 4 P.K. 4-32	46 -0-0	
20.	324	13-20 P.K. 0 -6	26-0-0	
21	542	3 -27	8-0-0	
22.	544	12-31	28-0-0	
23.	545	20-30	44-0-0	
24.	698	11- 5	22 -0-(	
25.	703	28-19	50-0-0	
26.	704	23- 1	27-0-0	
27.	705	18-20	27-0-0	
28.	706	12-31	22-0-0	
29.	707/2	17-17	23-30-0	

Serial No.	Survey No.	Area.	Assessment	Approximate Value.
30.	707/2	4 -0	-6-0	
31	708	21-13	29-0-0	
32.	709	25-5	38- 0-0	
33.	710	28-13	39-0-0	
34.	711	20- 9	25-0-0	
35.	712	23- 9	39-0-0	
36.	713	24-10	39-0-0	
37.	714	23-31	31-0-0	
38.	715	23-32	39-0-0	
30.	716	13-38	28-0-0	
40.	717	26-16	43-0-0	
41.	718	12- 0	19-0-0	
42.	719/1	20- 0	32 -2-0	
43.	719/2	4-23	16-14-0	
44.	720/1	6-35	9-15-0	
45.	720/2	7-24	11-1-0	
46.	721	29-38	41-0-0	
47.	722	22-31	38 -0-0	
48.	723	18-21	24- 0-0	
49.	724	26- 0	42 -0-0	
50.	725	26-16	38-0-0	
51.	726	28-11	48-0-0	
52	727	12-33	16-0-0	
53.	728	22-30	33-0-0	
54	729	23-21	35-0-0	
55.	730	21-25	35-0-0	
56.	731	21-11	36-0-0	
57.	732	26-33	40-0-0	
58.	733	16- 4	26-0-0	
59.	734	15-37	23-0-0	
60.	735	22-1	36-0-0	
61.	736	19-12	33-0-0	
62.	737	23- 5	33-0-0	
63.	738	27-30	45-0-0	

37/61

Serial No.	Survey No.	Area.	Assessment.	Approximate value.
64.	739	21-24	31 40- 0-0	
65.	740	24-24	40- 0-0	
66.	741	15-17	25- 0-0	
67.	742	14- 1	18 -0-0	
68.	743	6-36	10- 0-0	
69.	744	6-11	7 -0-0	
70.	745	16-15	21- 0-0	
71.	746	16-14	24- 0-0	
72.	747	14-26	21- 0-0	
73.	748	13-35	18- 0-0	
74.	749	15 -5	19- 0-0	
75.	750	17- 1.	22 -0-0	
76.	751	16-39	29- 0-0	
77.	836	19 -5	42 -0-0	
78	838	6-16	16- 0-0	
79.	877	16- 9	30 -0-0	
80.	879	13 -1	25 -0-0	
81.	880	19-27	37 -0-0	
82.	882	7 -0-Ø	13 -0-0	
83.	883	14-16	22 -0-0	
84.	885	16-36	26- 0-0	
85.	893	20-19	27- 0-0	
86.	894	18-32	26 -0-0	
87.	909	24-15	30-0-0	
88.	963	16-12	20- 0-0	
89.	964	17-34	23 -0-0	
90.	967	13-30	25 -0-0	
91.	968	15-11	25 -0-0	
92.	969	20-24	28 -0-0	
93.	970	20-14	38 -0-0	
94.	971	21-15	41 -0-0	
95.	972	22 -5	40 -0-0	
96.	973	23 -2	42 -0-0	
97.	974	25-23	50 -0-0	

Serial No.	Survey No.	Area.	Assessment.	Approximate value.
98.	975	25-19	51 -0-0	
99.	976	25-11	49 -0-0	
100.	977	20- 1	38 -0-0	
101.	978	21-39	37 -0-0	
102.	979	18-33	35 -0-0	
103.	980	19-36	40- 0-0	
104	981	17-22	32 -0-0	
105.	982	22 -2	43 -0-0	
106.	983	22-24	42 -0-0	
107	984	16-34	27 -0-0	
108	985	16-15	24 -0-0	
109	986	24-11	42 -0-0	
110.	987	26-17	41 -0-0	
111.	988	20-32	35- 0-0	
112.	994	28-31	45 -0-0	
113.	1032	9-13	17 -0-0	
114.	1033	18-18	29 0	
115.	1034	18-25	28 -0-0	
116.	1035	16-33	24 -0-0	
117	1036	14-22	21 -0-0	
118	1037	25-34	44 -0-0	
119.	1038	19 -5	36 -0-0	
120.	1039	17-24	25 -0-0	
121	1040	19-29	32 -0-0	
122.	1041	27-34	46- 0-0	
123.	1345	8 -9	15 -0-0	
124.	1346	4-34	9 -0-0	
125.	1347	5-17	9 -0-0	
126.	1468/1	12-20	17-12-0	
127	1468/2	9-13	13 -4-0	
128.	1469/1	12-18	24-12-0	
129.	1469/2	4 -6	8 -4-0	
130	1470	20-33	36 -0-0	
131.	1471	21-37	30 -0-0	

Serial No.	Survey No.	Area.	Assessment.	Approximate Value.
132.	1490/A + 1B	20-32	33 -8-0	
133.	1490/2	7-31	12 -8-0	
134	1490/2A + B.	11-14	16-12-0	
135.	1491/2	6-38	10 -4-0	
136.	1492	14- 8	23 -0-0	
137	1498	14 -9	23 -0-0	
138.	1499/1	9-39	17-15-0	
139.	1499/2	8 -0	14 -6-0	
140.	1499/3	8- 7	14-11-0	
141	1500/1	8 -0	15 -2-0	
142	1500/2	5-30	10-14-0	
143.	1501/1	8-10	15- 8-0	
144.	1501/2	10-35	20 -8-0	
145.	1502/1	4-16	6-14-0	
146.	1502/2	4-24	7 -2-0	
147.	1505/1	4-25	7-10-0	
148	1505/2	5-25	9 -6-0	
149.	1506	9-31	15 -0-0	
150	1507	3-17	6- 0-0	
151	1508	15-25	23- 0-0	
152	1509	29-34	60 -0-0	
153	1510	26235	55 -0-0	
154	1511	24-20	40 -0-0	
155	1512	20-30	46 -0-0	
156	1513	12-13	25 -0-0	
157	1514	22 -4	44 -0-0	
158	1518	15-15	22- 0-0	
159	1519	15 -8	27 -0-0	
160.	1520	9 -1	20 -0-0	
161.	1521	16-33	27 -0-0	
162.	1522	20-10	39 -0-0	
163.	1523	10-22	23 -0-0	
164.	1524	11-39	27 -0-0	
165.	1525	16-37	34 -0-0	

Serial No.	Survey No.	Area.	Assessment.	Approximate value.
166	1526	14-31	28 -0-0	
167	1527	22-21	44 -0-0	
168	1528	8-30	20 -0-0	
169.	1529	7 -7	16 -0-0	
170.	1530/1 + 2	24- 7	47 -0-0	
171	1531	26 -5	52 -0-0	
172.	1534	17-26	39 -0-0	
173.	1535	12-30	29 -0-0	
174.	1536	19 -1	43 -0-0	
175	1551	6 -5	14 -0-0	
176	1552	9-39	22 -0-0	
177.	1553	9 -7	21 -0-0	
178.	1554	9-33	20 -0-0	
179.	1555	7-11	13 -0-0	
180	1556	5-32	12 -0-0	
181	1557	4-28	8 -0-0	
182	1558/1	4-38	7 -0-0	
183	1558/2	4-10	6 -0-0	
184	1559	1-17	2 -8-0	
185	1560	0-12	0 -8-0	
186	1561	6-10	8 -0-0	
187.	1566	5-33	11 -0-0	
188.	1568	6-12	8 -0-0	
189	1570	5 -2	10 -0-0	
190.	1571	0 -31	1 -8-0	
191	1572	1-22	3 -0-0	
192.	1573	2-18	5- 0-0	
193.	1574	3-12	6 -0-0	
194.	1575	5 -8	9 -0-0	
195.	1576	5-24	8 -0-0	
196.	1577	5- 3	6 -0-0	
197.	1578	9-19	12 -0-0	
198.	1579	5-10	9 -0-0	
199	1580	3-22	5 -0-0	

41/13/65

Lands situate at Bhadrapur Taluka Navalgund in the District of Dharwar.

Serial No.	Survey No.	Area.	Assessment.	Approximate value.
1	249	17 -2	36 -0-0	
2	250	16 -5	32 -0-0	
3	251	20-11	41 -0-0	
4	252	19-29	41 -0-0	

Schedule C

The particulars of cash allowances pertaining to the -- Deshpande Watan of Annigeri is as follows :-

S.No.	Name of the treasury paying the allowance	Amount.
1.	Navalgund Sub Treasury.	Rs. 128.

This suit coming on this day for final disposal before M.S. Bagali Esquire, Civil Judge Senior Division, Dharwar in the presence of Mr. Indi pleader for the plaintiff and Mr. Hulgur pleader for the defendant No.1 and Mr. Bendigeri pleader for the defendant No.2, it is ordered and decreed that :-

Suit dismissed with costs. Defendant 1 may recover their costs from the plaintiff. Defendant 2 to bear her own costs, if any.

Bill of costs.

Plff.		Deft No.1		Deft No.2	
Stamp for plaint	Rs.66-10-0	1. Stamp for power.	Rs.0-10-0	Rs. 0-10-0	
Stamp for power	0 -10 -0	2. Stamp for Exs.	5-10 -0	3-2-0	
Stamp for Exs.	2 -8- 0	3. Pleader's fee. on Rs. 605/-	30- 5-0	30-5-0	
Pleader's fees on Rs.605	30-5 -0	4. Copying fees	1-14-0	Nil.	

Plff.		Deft 1.		Deft 2.	
1. Subsistence for Witnesses.	a. 2-0-0	1. Subsistence allowance	0-0-0		0-0-0
2. Lawyers fees.	95-1-0		—		—
Total	173-6-3	Total	38-7-0	Total	34-1-0
Court fee allowed on Rs.	8- 8-0	Costs disallowed.	4-7-0		3-2-0
Balance	165-14-3	Balance	34- 0-0		30-15-0

Given under my hand and seal of this Court this 17th day of December 1945.

Sd. M.H. Lawrenshaw
Examiner.

Sd. M.S. Bagal
Civil Judge S.D.
187-1946

Certified true
Translator.

Certified true
Examiner. Sd. S.R. Malaing

Certified true
Translator.

Suits:
Dharwar.
For a declaration that the orders passed by Government directing the Annigeri Deshpande watan lands to be continued to the legal successors of the late Bhimappayya Chandappayya as Khalsa lands on payment of full assessment are illegal and ultra vires.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 4028
Bombay Castle, 29th May 1946.

Read Government Resolution, Legal Department, No.7693, dated the 6th November 1944.

Letter from the District Government Pleader, Dharwar, No.594, dated the 21st December 1945, stating that the suit noted in the margin was decided by the Civil Judge,

In the Court of the First Class Sub-Judge, Dharwar.	Senior Division Dharwar, on 18th December 1945, when the following order was passed:
Long Cause Civil Suit No.20 of 1944.	
Chandappayya Bhimappayya Deshpande of Annigeri .. Plaintiff;	"Suit dismissed with costs. Defendant No.1 may recover their costs from the Plaintiff. Defendant No.2 to bear her own costs if any.
versus	
1. The Government of Bombay;) 2. Pushpavatibai kom Bheemappayya Deshpande.) .. Defendants.	
Claim Rs.605.	

Letter from the District Government Pleader, Dharwar, No. 807, dated the 1st/3rd May 1946 - forwarding uncertified copies of the judgment and decree.

RESOLUTION.- The result of the suit is recorded.

By order of the Governor of Bombay,

R. M. Mehta

R. M. Mehta,
Assistant Secretary to Government.

To

The Revenue Department,

The Commissioner, S.D.,

The Collector of Dharwar.

Issued 29/5

Ms. Submitted for signature

29/5

As. 29/5

Civil appeal No. 23 of 1946.

In the Court of the District Judge, Dharwar.

Appellant : 1. Bhimappayya Chendappayya Deshapande, 12. student, by his guardian mother Chitravatibai kom Chenadappayya Deshapande, Jain, 29, house hold work, of Annigeri Taluka Navalagund.

Against.

Respondents : 1. The Government of Bombay, Bombay.

2. Pushpavatibai kom Bhimappayya Deshapande of Annigeri, Jain, 44, house hold work of Annigeri Taluka Navalagund.

Claim 605/-.

In this, the appellant being aggrieved by the judgment and decree in L.C. suit No. 20 of 1944 passed by the Civil Judge Senior division, Dharwar on 17-12-1945 begs to appeal on the following among other grounds :-

1 The judgment and decree are contrary to law and evidence in the case.

2. The ancient nature of the Inam is not taken into consideration by the Lower Court. The Deshapande watan of Annigeri is a vgrant from the Mohemadan Kings of Bijapur. The watan was enjoyed by this family in three successive Governments viz. Mohemadan kings of Bijapur and the Peshavas and the British Government

3. The Sanad in question by the Gordon Settlement Committee is neither a regrant or new grant of Inam

4. The settlement did not curtail the rights of watandar which they had before the settlement.

5. The settlement was the arrangement between the Government on the one hand and the watandar on the other hand, regarding the exemption from service

of the watandar to state.

6. The family enjoyed the watan without paying assessment to Government and were rendering services as Deshapande to the Government.

7. The Lower Court should have held that the sanad in question does not restrict the General privilege of a Hindu of adopting at any time any person without restriction to family. The sanad in question allows the adoption of a Parai if there is no objection of the sharers of the watan.

8. The sanad in question cannot take away the rights of the watandar of the adoption and the Lower Court ought to have held that the sanad if it did take away this right, was beyond the scope and power of Inam commission called Gordon ~~Committee~~ Committee.

9. The Lower Court ought to have held that the widows of late Bhimappayya Deshapande complied sufficiently to the proviso No. 3 of the Sanad when they made an application for permission and offered to pay a Nazarana of one anna in a rupee.

10. The Lower Court ought to have held that the Government was bound to accord permission to the plaintiff's adoption.

11. The third proviso has been inserted in the sanad in order to protect the interest of the sharers if any. The request of all the sharers of the watan to the adoption of a parai was not possible in this case as there are no sharers in the watan.

12. The Lower Court is wrong in construing the first proviso of the sanad as it is not a caluse of resumption of the watan It means only that when there is no requisite heir to the watan, Government are entitled to insist on service or further assessment.

13. The Lower Court has ignored the main portion of the sanad. The Government can resume th watan only on the happening of breach of the two conditions that is to say that the watandar and their heirsshall continue faithful subjects of the British Government and shall render the fixed judis, to the Government.

14. It is not the case of the Government that these conditions are violated by the holder or their heirs.

15. According to this condition the Government is bound to continue the watan heriditorily and the adopted son being the heir to the last watandar the Government cannot resum e th watan.

16. The Lower Court has not considered the effect of the ruling in 39 Bombay Law reporter page 851 in construing the provision 1 of the sanad.

17. The Lower Court was wrong in saying that the widows and the de ceased plaintiff accepted the position and implication of the Government resolution.

18. Mere payment of the assessment is not acceptance of the Government resolution as the refusal to pay assessment could have entailed the breach of the essential condition of the Sanad.

19. The Lower Court has made much of the delay in filing the suit. As the suit is within limitation no question of delay arises in this case.

20. The recognition of adoption by the Government on 2 former occasions clearly proves the custom that the family is entitled to adoption an outsider when there are no harers in the watan.

21. The Lower Court ought to have held that the Government was bound to recognise the deceased plaintiff as a successor in interest of the watandar family like

late Bhimappayya Deshapande.

22. The Lower Court ought to have held that the Government resolution of resumption of watan was illegal and ultra vires andnot binding on the deceased plaintiff.

23. The Lower Court ought to have held that the deceased plaintiff as an heir of the last holder and as such was entitled to hold watan lands without payment of full assessment and on payment of judi only.

24. The Lower Court ought to have held that the Government was estopped from contending that the suit for cash allowance was barred under sections 4 or 6 of the Pensions Act as the deceased plaintiff applied for the certificate and it was refused by the Collector.

25. The Lower Court ought to have held that the suit for cash allowance was not barred under S. 4 or 6 of the Pensions Act as the refusal was illegal and ultra vires.

26. The deceased plaintiff was entitled to cash allowance under the main conditions of the sanad he being the heir to deceased watandar Bhimappayya Deshapande.

27. The Lower Court was wrong in refusing the prayer of the deceased plff for a declaration that he is entitled to the amount of assessment recovered and cash allowance payable before the date of suit.

28. The Act of the Government in levying full assessment and in withholding cash allowance is illegal and ultra vires. Consequently the amount so levied and withheld becomes a deposit and as such the Government is bound to pay it on a mere declaration being viven by the Court.

29. The Lower Court ought to have held that the payment of the Court fee for the recovery of that amount was not necessary.

30. The Lover Court has not drawn proper inferences in the case.

For these among other grounds it is prayed that the decree and judgment of the Lower Court be reversed and the appeal allowed with costs. The appeal is in time.

24-1-1946. Drafted and presented by
Sd/Indi.
Pleader for appellant.

Suits:
Dharwar.
For a declaration that the order passe by Government directing the Annigeri Deshpande Watan lands to be continued to the legal successors of the late Bhimappayya Chandappayya as Khalsa lands on payment of full assessment are illegal and ultra vires.

Government of Bombay,
Legal Department.
Resolution No. 4163
Bombay Castle, 5 June 1946.

Read G.R., L.D.No.4028 dated the 29th May 1946.

Letter from the Collector of Dharwar No.L.A.W.444 dated the 13th May 1946-forwarding papers and requesting sanction to the defence of the First Appeal No.33 of 1946, filed by the plaintiff in the Suit noted in the margin in the Court of the District Judge, Dharwar against the decision of the Civil Judge, Senior Division, Dharwar, dated the 17th December 1945.

In the Court of the First Class Sub-Judge, Dharwar.

Long Cause Civil Suit No.20 of 1944.

Chandappayya Bhimappaya Deshpande of Annigeri ... Plaintiff;

versus

(1) The Government of Bombay;
(2) Pushpavatibai Kom Bheemappayya Deshpande ... Defendants.

Claim - Rs.605.

Endorsement by the Commr. S.D.No.L.S.T.317 dated the 17th May 1946 - forwarding the above with his concurrence.

Resolution:- Sanction is accorded to the defence of the First Appeal No.33 of 1946, in the court of the District Judge, Dharwar on the lines of the brief accompanying G.R., L.D.No.7693 dated the 6th November 1944 and the favourable grounds contained in the judgment of the Civil Judge, Senior Division, Dharwar, dated the 17th December 1945.

By order of the Governor of Bombay
R. M. Mehta
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division.
The Collector of Dharwar,
The District Government Pleader, Dhar...
(with papers of the case received from the Collector of Dharwar.)

6/4

Subd. after cosine:

2. File in S. Durr/45

2nd
4/6

MS RS
6/6

S. Durr 5/45
7/6

151

Court fee stamps on the Petition ... the verification of petition ...

Court Fee Stamp.

... appeal memo on the ... day of October 194...

Record Keeper.

Court fee ... 21/ -/-
... 5/ 4/-
... 5/ 4/-
... 1/ 5/-
Paper. - 2/-

50/ -/-

It was received on the ... day of October 194...
(Sixth) Twenty ninth day of ... 194...

Record Keeper.

Received on 4/1/4...
Registered on 1/ /1 4...
Decided on 25/ /1 4...
Duration 1 year, 7 months and 1 day.

In the District Court of Dharwar (Ori.1)

at Dharwar.

Pleaders:-

Advocate ... of Dharwar for Mr. ... Patali.

Civil Appeal No. ... from decree in Civil Suit No. ... of 19... of the Court of the Civil Judge, Senior Division, Dharwar (Mr. ... Patali).

... a Chandrappa ..., minor ... guardian mother Chitgavati ... Desbande of Kirgeri Taluka Savalgumm .... Appellant (Original ...)

Against.

1. The Government of Bombay.

Mr. S.R. Patapur
Asst. Govt. Pleader
for Respt.

2. Bhimavvabai to... Desbande of Kirgeri Taluka Savalgumm.... Respondents (Original Defendants)

Claim:- ...

This is an appeal against a decree dismissing the Plaintiff's Suit No.L.F.20 of 194... passed on 17/2/194... by the Civil Judge, Senior Division, Dharwar.

... The plaintiff claimed to be the adopted son of one ... Desbande who died on 17/3/19... leaving him the only ... him surviving. The senior widow Chandrabai adopted the plaintiff on 1...6/1082. Bhimavvabai the sole ... of the ... Watan of Mulgund and neighbouring villages which was enjoyed

service watan but which was continued by the British Government under a sanad granted under the Cordon Settlement which was dispensed with the services on condition of payment of a fixed judi. It was alleged in the plaint that after the death of Rama Jaiva, his widow had applied to the Government for permission to adopt the plaintiff, but the Government refused permission without assigning any valid reasons and in thus refusing the permission they had acted contrary to the terms of the sanad. It was alleged that there was a custom in the family to take a boy in adoption from outside the family and that the Government had in law sanctioned the adoption of an outsider. The plaintiff challenged the action taken by the Government by the Resolution XXXXXXXXX G.O.R.T.No.5233/23 dated 21/12/'24 in making the watan lands khalsa and levying full assessment on them with effect from 1924-25, as the action was illegal and ultra vires and not binding on the plaintiff. The reasons given by the plaintiff in support of his claim were (1) that the sanad did not constitute a fresh or a new grant made by the British Government but that the watan was an ancient one and the sanad merely continued it with a modification that in lieu of services a fixed judi was to be paid, (2) that the condition of the sanad that the watandar was to remain loyal to the British Government had not in any manner been infringed and as the plaintiff was the adopted son of Rama Jaiva, he was a lineal descendant of the original watandar and by law for the purpose of the watan being continued in the name. The reliefs claimed were (a) that a declaration should issue that the order passed by the Provincial Government on 21/12/24 was illegal and ultra vires and not binding on the plaintiff; (b) a declaration that the plaintiff as the validly and legally adopted son of the deceased Ramajaiva, was entitled to hold the resumed watan lands of Nagarur and thereupon to enjoy the fixed judi and to receive cash allowances, (c) a permanent injunction restraining the Government and its officers and agents from levying full assessment on the lands and a mandatory injunction directing the Government to pay the cash allowances to the plaintiff from the date of the suit; (d) a declaration that the plaintiff was entitled to credit for the amount realised in the past by the revenue officers in excess of the amount of judi

and to the amount of the cash allowances illegally withheld with interest thereon and (e) costs of the suit. The plaintiff had filed the suit on 9/6/1944 after giving a notice to the Government under section 80 of the Civil Procedure Code.

3. The suit was resisted by the Provincial Government. By their written statement (Ex. 98) various defences were raised. The suit was claimed to be barred under Articles 120 of the Limitation Act. The plaintiff's claim as regards the cash allowances was barred under sections 4 and 5 of the Pensions Act in the absence of a certificate from the Collector. As the plaintiff had not paid the Court fees on the amount of moneys of which he claimed a refund, he was not entitled to the refund. The order passed by the Government on 10/11/1931 was valid and intra vires and binding on the plaintiff. It was contended that after the death of Shimadavva, there was no male heir, lineal, collateral or adopted within the limits of the Patamar family and hence the Government were entitled in resuming the watan and in levying full assessment on the land under the terms of the sanad and in stopping the cash allowance. The action of the Government in refusing permission to the widows to adopt the plaintiff on their behalf was claimed to be within the powers and direction of the Government. It was urged that the plaintiff could not claim the terms of the sanad granted under the Gordon settlement and therefore he was not entitled to any of the reliefs sought. Defendant No.2 the surviving widow filed no written statement.

(4) During the pendency of the suit, the plaintiff Chanarayya died and his son, who is a minor, prosecuted the suit through his next friend, his mother.

(5) On these pleadings, issues were raised in the lower Court and findings were given on them by the learned Civil Judge as below:-

1. Was the Government legally bound to give permission for the adoption of the deceased plaintiff by Sharadabai, the widow of Shankar Chandra Pattavardhan?

2. If not, was Government entitled or bound to recognise the adoption of the deceased plaintiff, as valid, and to treat him as a successor in interest of the deceased Patamkar

3. If so, was the Government solution [illegible]

both November 1 '21 legal and <u>watan</u> rights and not barred upon the plaintiff since deceased ?-

4. Is the plff entitled to the declaration that he was entitled to hold the <u>watan</u> lands in the suit without payment of full assessment but on payment of <u>judi</u> only ?

5. Is the plff's claim regarding the cash allowance maintainable without a certificate from the Collector under the Pensions Act ?

6. If so, is plff entitled to a declaration that he was entitled to the cash allowance in suit ?

7. Are the plaintiff's claims for declarations sought barred by the law of limitation under Article 120 ?

8. Is plaintiff entitled to the injunction sought regarding the levy of full assessment on the plaint lands and payment of cash allowance ?

9. Is plaintiff entitled to the declaration sought in paragraph 15 clause (iv) of the plaint regarding the amount of the full assessment already recovered from him and the cash allowance which has become due before the date of suit ?

10. What relief is plaintiff entitled to and what decree should be passed?

<u>Findings</u>

(1) Not bound (2) No. (3) Not proved. (4) No. (5) Not maintainable. (6) Does not survive. (7) No; Article 120 applies and the suit is in time (8) No. (9) No. (10) Plaintiff not entitled to any relief ; suit dismissed with costs.

(6) The same issues were raised for consideration in the appeal and my findings are the same as those of the learned Civil Judge.

<u>Reasons.</u>

(7) Before I discuss the issues, I will refer to some undisputed facts. Bhimappa who was the sole surviving holder of the <u>watan</u> died on 18/8/1929 leaving no heir ~~lineal, collateral~~ or adopted within the watandar family. There were two widows of his, Chandrabai and Pushpavatibai defendant No... The latter was allotted on 4/12/1929 to the Government through the Collector for purposes of the Act to their husband, the plaintiff Chandrappayya, who was stated to be a <u>paroki</u> i.e. outside the <u>watan</u> family. ... The plaintiff's application is Ex. 58. The Government by their resolution G. ... No... 4/2... date ...1/10/1930 (Ex. 73) refused to grant the permission. The Collector of Dharwar thereon recommended to the Government the removal

of the watan lands by levy of full assessment from the year 1928-29. He recommended that the lands after the levy of the full assessment might be continued in the possession of the legal successor of Bhimacharya as Phalna lands. The Govt. sanctioned the proposal of the Collector by their Resolution, G.R.B.C. No.5283/28 dated 30/11/1931 (Ex.279). As a result of this resolution, the Revenue officers demanded the difference between the full assessment and the Judi in respect of the watan lands from the widows. The difference termed as Nikasan amounted to Rs.7417/8/- for two years i.e., 1928-29 and 1929-31. The widows pleaded inability to pay such a large sum at one time and they applied to the Collector to allow them to pay off this amount by four annual instalments. This application of theirs was forwarded to the Government and the Government sanctioned the arrangement that the widows were to pay the amount by four annual instalments, by their Resolution G.R.B.C. No.5288/28 dated 30/12/1932 (Ex.268). The first instalment was recovered some time before 14/9/1933 and the remaining three instalments were also recovered the last instalment being credited in the treasury on 30/8/1937. The plaintiff who had been adopted on 12/7/29 paid the instalments as is clear from Ex.26). The full assessment on the watan lands is thus being paid from the year 1929 to 37 and the cash allowance to which Bhimacharya was entitled ceased to be paid from that year.

3. The plaintiff's claim rests upon the interpretation of the sanad under which as hereditary of the Common settlement the watan had been continued by the British Government. That the watan in dispute was in existence in the pre-British days and that it was a service watan is not disputed. The watan consisted of lands which were given not bearing any land tax or assessment but also a cash allowance. The history of such watans is well known and it is not necessary to give any elaborate account of it. When the British established their rule in this part of the country, the watans were continued with the holders for some years according to the past usage or custom, but later on the Government found it necessary to investigate the titles of those who continued to hold lands as exempt from land tax and also other items such as cash allowance etc.. In 1852 it was sent up for the investigation of such claims under Act XXX

I of 1852. The Government later on found that the proceedings of the Commission were slow and sufficient progress had not been made in the adjudication of all titles and a number of cases still remained for decision. The Government then passed Summary Settlement Acts one of which Act No. II of 1863 applied to Deccan Gandesh and Southern Maratha Country. In order to have speedy disposal of all such claims, Government officers were empowered to accept any and every claim that was put in respect of any extent of the Devasthan and Inam lands and the Government accepted the burden of disproving that claim instead of putting the burden of proving the claim upon the claimant. The Government were also liberal in allowing such of the lands as were held on personal tenure to become heritable and transferable freehold on payment of a certain fixed specified Nazarana. In arriving at these settlements with the claimants, the Government were prepared to waive all restrictions and to agree that so long as the watan was with the watandar he could do what he liked with it and no escheat could take place so long as the original grantee had descendants. Colonel J. Etheridge in Selections from the Records of the Bombay Government No. 192 New Series in para 58, has described the then attitude of the Government as follows:-

"Into the Inam property had been absorbed several private properties in the restricted sense that an Inamdar could do what he liked with his own so long as it was his own; that is, no escheat could take place so long as the original grantee had descendants. Such was the custom of the country. But the grant never lost the reversionary right in case of the extinction of the family of the grantee and devolved at once to the intentions of the grantor. Now, however, the tenure has arrived when all restrictions are to be done away, and the words 'lapse and escheat' (except when no owner can be found) were to disappear from the vocabulary of the Government officer. All original Inams were to become transferable freehold, and those which had not been actually sold as the property of individuals were equivalent to the public for the right of reversion had become secured to the imposition of partial assessment".

That the settlements popularly known as "Common Settlements" amount to is described in a case reported in Bapuji V. Keshav Shankar (I.L.R. 1 Bom. 19) at page 25 of the

A

came to the conclusion that the consent of the Govt. was not requisite for a deed of relinquishment, as stated in Wittke Inamsa (sec. V, pl. 3 and 7) "The invitation of Kinsmen and the others is for the sake of their witnessing in the same manner as the invitation of the King" (section V pl 9). Whatever the privileges of Inamdars or Watandars were originally, in respect of succession to the under the Carnatic Settlement to which these grants belong, they agreed to restrictions being put upon their power to [illegible] and it was agreed that the Govt. should give the [illegible] recognition of the mixed judicial Govt. and the holders of watans would be bound by the terms of the sanads. The chief's claim has to be considered in the light of the terms of the sanad and the events which preceded the grant of the sanad in respect of the assessment on the lands as well as the position of the chief to which the grant refers as it stood at the time.

The [illegible] sanads in respect of the said watan is dated. The sanad is partly in Persian and partly in Marathi. The translation of the said sanad is similar to that which was [illegible] by this Court in the case of Balaji V. Sitto (1 Bom. 45) and the Persian portion is printed at page 47 of the report. The material portion of the sanad is as follows:-

"It is hereby declared, that the said [illegible] shall be continued hereditarily by the British Government on the following conditions; that is to say, that the said holders and their shall continue faithful subjects of the British Government and shall render to the same the following fixed yearly dues..... In consideration of the fulfilment of which conditions:-

1st :- The said lands and cash allowances shall be continued without demand of service, and without increase of land-tax over the above fixed amount, and without objection or question on the part of Government as to the rights of any holders thereof, so long as any male heir to the Vatan, lineal, collateral or adopted, within the limits of the Watandar family, shall be in existence.

2nd:- No Nazarana or other demand of the part of Government will be imposed on account of the succession of heirs, lineal, collateral, or adopted within the limits of the Watandar family, on permission to

~~there~~

into existance not from the time of his adoption but from the death of of the holder, to whom he was adopted as a son by his widow. I will merely refer to these cases which lay down this proposition. Nagindas Bhagavandas V. Bachoo Harkisondas (18 Bom.L.R.172 P.C.) ; Pratapsing Shivsing v. Thakor Shri Agarsingji Raisinghji (21 Bom.L.R 496 P.C.), and Anant Bhikappa v. Shankar Ramachandra (46 Bom.L.R. 1 P.C) .. If the conditions of the sanad are construed in such a away the sanad lays down no restriction on the power of the holder of the watan in his life time to adopt a boy even from outside the watandar family or that it gives a similar power to his widow after his death then this proposition would certainly help the plaintiff in the suit I would therefore proceed to discuss the terms of the sanad.

10. The first clause of the condition of the sanad as given in English, if read by itself, would lend support to the appellants contention that the words in the last sentence of that clause "within the limits of the watandarfamily" should be treated as qualifying the word "any male heir to the watan" in the penultimate line of that clause and not as qualifying the word 'adopted' in that clause. It si argued with considerable force that some of the words in the clause create tautology for instance, if a holder of a watan, who has no Auras son, adopts a boy whether from the watandar family or from outside the watandar family, after the adoption of the boy by him, that boy would become his lineal descendant and if there are other cpllaterals, those collaterals might similarly be original members of the watandar family or they might even have been adopted from outside the watandar family and they would become collaterals at the time of the death of the holder of the watan. In Balaji v. Datto (27 Bombay 75) Jenkins.C.J. has made some observations about this clause at pages 81 and 82 ; as follows:-

In constuing this document it must be borne in mind that

it relates to the whole watan and not merely to a takshim in the watan. Looking then to the terms of the sanad nowhere is any express prohibition imposed on adoption whether the person proposed for adoption was or was not member of the watandar family ; but while in the second clause there is express provision that no nazarana shall be chargeable in respect of the adoption of a member of that family ; the third clause provides for the recognition by Government of a general power to adopt without restriction as to family on the entire body of watandars accepting liability to a perpetual nazarana in consideration thereof and applying collectively for the purpose. There has been some discussion before us as to how the words ' lineal collateral or adopted, within the limits of the watandar's family " should be read ; for the punctuation of those words in the first clause agrees neither with the phraseology of the vernacular, nor with the punctuation in the second paragraph, while at the same time it is only by adherence to the punctuation, in the first clause that tautology is ~~exempted~~ escaped. I do not, however, think it necessary in reference to this to do more than express surprise that, in a document of this class, such ~~want~~ want of care should have been shown, and I so think because, whichever way the words be read, I fail to see that the document can or does create in favour of kinsmen a right to object that would not otherwise exist.

Beaumont C.J. in Ramsomappa Bimarao Desai v' The Secretary of State for India in Council (39 Bom. L.R. 851) had to consider a sanad issued by the Inam Commission, which contained a provision almost similar to the one in the suit sanad About that clause, His Lordship observed as follows:-

"I doubt if the words "in lineal succession from generation to generation" are to be construed in their literal sense as meaning descendant from father to son. I think they really are equivalent to "continued to the owner and his heirs" because the conditions imposed are not upon lineal heirs but were imposed upon heirs generally, But however that may be, the plaintiff as I will mention in a moment, is the adopted son

of Bhimrao, and he is, therefore, in my opinion, clearly a lineal descendant of Bhimrao under Hindu Law. An adopted son is an exactly the same position, with one or two minor exceptions not necessary to notice, as a natural born son, and I have no doubt that an adopted son of a Hindu can properly be described as succeeding in lineal succession.

I have already reproduced in the earlier part of my judgement the Marathi rendering of the clause of the conditions of the Sanad. Khandia in his Watan Act, 5th Edition, 1936, at page 227 has referred to the inconsistency in the Marathi and English terms of this condition and has stated as follows:-

It would be useful to point out what strikes an inconsistency between the English and Marathi forms in regard to the first clause of the Sanad. In the English form that clause runs as follows:- The said lands ..... shall be continued .... as long as any male heir to the watan, lineal, collateral, or adopted within the limits of the watandar family, shall be in existance. The difference between two lines in the fact that whereas in the English form the express on 'Within the limits of the watandar family qualifies ' heir to the watan ' that in the other qualifies the word 'adopted'. This difference though a pearing unimportant at first sight is calculated to give rise to very knotty and important question of law. So fa ras the present rulings go, the law seems well settled that a watan of this class would continue in the family of the grantee as long as there is in the family a male member claiming descent through a male. These rulings are the logical conclusions of the first clause of the sanad in the English form, as that form specifies the duration of the grant by the words 'so long as a male heir to the watan - within the limits of the watandar family shall be in existance'. But the words used in the Marathi form bear a different construction altogether; they mean, to give them freely, that so long as a male heir to the watan whether that heir be a lineal or collateral one or one adopted within the watandar family is in existance. They, therefore, do not exclude males descended through females, while the English form does. This difference becomes the more complicated by the fact that the

165

sanads give, without a single exception, the terms of the grant in both the languages, and this gives rise to the question as to the terms in which of the two languages should be considered as the real terms agreed upon between the parties to the sanads. It may be noted that the punctuation in the second clause of the sanad is different from that in the first"

Phadnis at page 229 in referring to the discrepancy regarding the English and Marathi renderings of clause (1) of the conditions has also stated as follows:-

"Moreover, it is a doubtful question on account of the inconsistency in the English and Marathi clauses as to which of them will be the determing factor as to the rights of the parties to the contract. If Marathi clause is to be binding then the qualifying clause 'within the limits of the watansar family' will only qualify the words adopted and not heirs' lineal or Collateral' as in the English clause. It is possible that the sanad being an evidence of an agreement and contract between the parties the Marathi clause alone will be held binding on the watandars because it is for their benefit that the cluase is insrted they not knowing English- and it is on the faith of this Marathi clause that they must be taken to have consented to the commutation".

In the suit land also it is stated below the English prtion of the sanad that the then holder has signed in Marathi and that he accepts the grant on the terms and conditions aforesaid. The second clause provides that no Nazarana on the part of the Government will be imposed on account of the succession of heirs lineal, collateral or adopted within the limits of the watandar family and permission to make such adoption need not hereafter be obtained from Government The third clause lays down that "When all the shares of the watan agree to request it, then the general privilage of adopting at any time any person, (without restriction as to family) who can be

be legally adopted, will be granted be Government to the watan on the payment from that time forward in perpatuity of an annual Nazarana on one anna in each rupee of the above total emoluments of the watan". Reading the three clauses together, it would be a reasonable construction to plaae on the sanad to say that the Government undetook to continue the watan provided the holder had an heir, lineal or collateral ie, born in the family of the watandar or an heir who has become such on account ofthis adoption in the family. Permission of the Government is not necessary to be taken to the adopt on of any one within the watandar family and the Govt. will not impose nazarana at th time of the succession of such an heir. But clauses 2 and 3 suggest that if an adoption of any one outside the watandar family is to be permitted in the case watan where there may be other sharers as well, Governm nt will grant permission to such an adoption, if only all the sharers consent to the adoption and Nazarana is pa d and then the watandar would get permanent right to adopt one aven fom outside the watandar family. The Sanad does not specifically provide for a case of a single holder wishing to adopt a boy from outside the watandar family, but clauses 2 and 3 would imply that the permission of the Govenment would be necessary and Nazar can be imposed on the succession of such an adopted heir. Clause 1 read along with the clauses 2 and 3 would therefore lay down that the holders of watan had agreed at the time when they entered into the settlement known as Gordon Settlement and received grants in terms of the settlem nts, that if there were no natural born lineal or collateral heirs in the family or there was no such heir adopted within the watandar family, the watan would be liable to be discontinued. Relying upon these three clauses of the conditions, it is contended on behalf of the Government that if Bhimappayya had during his life time, applied for permission to adopt an outsider and the Government had refused it on insufficient grounds or arbitrarily, the case would have been different but when he died without leaving any natural born, lineal or collateral heir or an heiradopted from the watandar family, which adoption, if it was to himself, he could have made only himself, the Government had under clause 1 the right to resume the watan. Under clause 2,

(67) 4

clause 2, the widows could have adopted a boy from the watandar family and the Government could not have claimed the right to resume the watan. But when the widows in this case made an application for adopting the plaintiff who was a parai, the Government had the discretion either to grant permission or to refuse it and after they refused the permission, the adoption of the plff who was a parai by the widows will not put him in the position of a lineal descendant of Bhimappayya for the purpose of entitling him to claim the watan lands and cash allowances. In Balaji V. Datto (27 Bombay 75) the dispute was between a lineal heir, who claimed to be such by reason of his adoption, and collateral heir of the last holder. The High Court held in favour of the adopted heir on a construction of the Sanad which was one issued under the Gordon Settlement. At the same time they observed that this decision of heirs would not bind the Government and that it wa open to the Government to consider that position where the adopted heir would be the sole claimant to the watan. In Rama Somappa v. Secretary of State (39 Bombay L.R.851) to which Government was a party, it was argued for the Government that the case in Balaji v. Datto (27 Bombay 75) had been wrongly decided and the Government requested the Court to refer it to a Full Bench for the purpose of reconsidering th decision. Beaumont C.J. refused to do so on the ground that number of years had passed since the decision on Balaji v Datto (27 Bombay 75) was given and titles of many persons would be affected. At the same time the learned Chief Justice made it clear that the decision in that case could not bind the Government. I am therefore foetified in the view which I have taken that the Government under the terms of the Sanad had the descretion to refuse permission to a Parai being adopted in the watandar family.

12. It was contended for the appellant that when th widows applied to the Government for permission to adopt the plaintiff, the Government in refusing permission had acted arbitrarily. In this connection it may pointed out that the Government resolut on (Ex 278) shows that both the

both the Collector and the Commissioner had supported the widow's application but the Government drew their attention to certain instructions which had been laid down by the Government in their resoltuion GRD No.9234/24 dated 25/7/23 and 20/11/28 regarding the treatment of non-watandar adopteés in respect of non-service watan lands, villages and allowances. Phadnis in his Watan Act at pages 230-231 5th Edition, 1936, has referred to a number of cases in which Govt. had either given or rufuséd permission in some cases and in some cases recognition was granted evan post-facto to adoption of non-watandars. Government, it appears, then thought it necessary to lay down definite instructions for the guidance of their officers and the principle laid down appears to be that permission should not be refused in the case of Inams and watans which were both ancient and important from the point of view of the community, but that in the case of minor or unimportant inams and watans, permission should not be granted nor adotpion already made be given recognition to. It was in accordance with this policy that the application of the widows of Bhimappayya had been turned down by the Government. It may be and the application of the widows and the correspondance pertaining to it discloses it that there was no male person within the watandar family then available for the adoption and if any one had to be adopted to Bhimappayya, the person to be adopted would be necessarily one from outside the watandar family. But the sanad contemplates such a contingency. Under the third clause of the condition in the sanad, the Government were bound to give permission to the adoption of anyone outside the watandar family if all the sharers agreed to such an adoption and Nazarana as required is paid. By clause (2) Government have clearly stated that their permission to the adoption of any one from within the watandar family will not be required and they would claim no Nazarana at the time of succession of such an heir. By clause (1) Government bound themselves to continue the watan so long as there was an heir, lineal, collateral or adopted within the family. The widows by adopting the plaintiff who was a parai, after their request was turned down, have put themselves in a position which gave the Government a right under the term of the sanad to resume the watan and to stop the cash allowance. It cannot therefore be said that the Government have acted arbitrarily in refusing permission nor is their action in resuming the watn by

169 24

watan by levying full assessment on the lands and in stopping the payment of the cash allowance to the plaintiff, ultra vires of the Government.

13. The findings of the learned Civil Judge on the main issues, with which I am in aggeement, should dispose of the appeal, but the learned Assistant Government Pleader has ~~contended~~ contended that the finding of the learned Civil Judge on the issue whether Article 120 applies to the suit is wrong and the suit was liable to be dismissed on the point of limitation. It was contended for the Government that when the Government decided to levy full assessment, the plff had the cause of action arising at that time and if he wanted to avoid the liability which arose every year when full assessment, ~~the plaintiff had the cause~~ was levied, the suit should have been filed within six years. I am unable to accept this contention. I agree with the learned Civil Judge that the rulings cited by him in his Judgement viz, The Secretary of State fo India v. Parashram Madhavrao (36 Bom.L.R.551 P.C.) Adivikolanu Chakrapani Rao v. Sri Rajah Venkatadri Apparao (A.I.R.1937 Madras 303 and I.L.R Madras 587 Bacha Saheb v. The Secretary of State for India, would apply to the present case and the proper article to be applied would be not Art 120 but either article 131 or 144 which lay down a period of 12 years for filing a suit. If the plaintiff had succeeded on the other issues. his suit would have been in time.

14. The plaintiff had claimed a declaration that he was entitled to recover from the Government the arrears of the cash allowance from 1929-30 to the date of the suit and also the excess amount of the assessment over the judi recovered from him from 1929-30. I agree with the learned Civil Judge that such a claim is not tenable. The plaintiff should have asked for a definite amount in the suit and he should have paid court-fees on the same which he had not done. The plff's suit in respect of the cash allowance would also be barred under the Pensions Act as he had not produced a certificate from the Collector.

If the plaintiff had succeeded on the other issuws, this bar under the Pensions Act would not have immediately non-suited him, as time could have been given to him evan at this stage to enable him to make a fresh application to the Collector for a certificate and the drawing up of the decreex could have been postponed ~~until~~ until he produced the ne cessary certificate. The result is that all the contantions raised for the appellant in the appeal fail and hence the decree of the lower Court dismissing the suit must be confirmed.

15. The learned Asst. Government Pleader contended that, in the decree drawn up in the lower Court, the pleader's fees have not been properly computed.. His contention is that the pleader's fees should have been calculated not on the notional value of the declaration fixed by the plaintiff but on the value of the subject matter. But in this appeal the Government have not filed any cross objections agianst that part of the decree and I should think that it would not be open to me to interfere with the decree of the lower Court in the absence of such cross objections. I therefore pass the following order.

O R D E R.

The appeal is dismissed with costs.

25th August 1947.

Sd/- R.D.Shinde.
Distrcit Judge.

seen

Sd/- S.R.Malapur
Asst. Govt. Pleader.

Grounds of appeal.

1. The judgement and decree are contrary to law and evidence in the case.

2. The ancient nature of the Inam is not taken into consideration by the lower Court. The Deshpande watan of Annigeri is a grant from the Mahomedan Kings of Bijapur. The watan was enjoyed by this family in three successive Governments, viz., Mahomedan Kings of Bijapur and Peshwas and the British Government.

3. The sanad in question by the Gordon Committee is neither a regrant or new grant of Inam.

4. The settlement did not curtail the rights of watandar which

~~they had be~~

171 33

they had before the settlement.

5. The settlement was the arrangement between the Government on the one hand and the watandar on the other hand, regarding the exemption from service of the watandar to state.

6. The family enjoyed the watan without paying assessment to Government and were rendering services as Deshpande to the Government.

7. The lower Court should have held that the sandd in question does not restrict the general privilage of a Hind of adopting at any time any person without restriction as to family. The sanad in question allows the adoption of a Parai if there is no objection of the sharers of the watan.

8. The sanad in question cannot take away the rights of the watandar of the adoption and the lower Court ought to have held that the sanad if it did take away this right, was beyond the scope and power of Inam commission called Gordon Committee.

9. The lower Court ought to have held that the widows of late Bhimappayya Deshpande complied sufficiently to the proviso No.3 of the ~~xxxxx~~ sanad when they made an application for permissio and offered to pay a Nazarana of one anna in a Rupee.

10. The lower Court ought to have held that the Government was bound to accord permission to the plaintiff!s adoption.

11. The third proviso has been inserted in the sanad in order to protect the interest of the sharers if any. The request of all sharers of the watan to the adoption of a Parai was not possible in this case as there are no shareres in the watan.

12. The lower Court is wrong in construing the first proviso of the sanad as it is not a clause of resumption of the watan. It means only that when there is no requisite heir to the watan Government are entitled to insist on service or further assessment.

13. The lower Court has ignored the main portion of the sanad. The Government can resume thenwatan only on the happening of breach of the two conditions that is to say that the watandar and their heirs shall continue faithful subjects of the British Government and shall render fixed judis, to the Government.

14. It is not the case of the Government that these conditions

conditions are violated by the holder ~~afxtkm~~ or their heirs.

15. According to this condition the Government is bound to continue the watan hereditarily and the adopted son being an heir to the last watandar to the Gove nment cannot resume the watan.

16. The lower Court has not considered the effect of the ruling in 39 Bombay Law Reporter page 851 in construing the provision 1 of the Sanad.

17. The lower Court was wrong in saying that the widows and the deceased plaintiff accepted the portion and implication of the Government Resolution.

18. Mere payment of the assessment is not acceptance of the Govt. Resolution as the refusal to pay assessment would have entailed the breach of the essential condition of the sanad.

19. The lower Court has made much of the delay in filing the suit. As the suit is within limitation no question of delay arises in this case.

20. The recognition or adoption by the Government on 2 former occasions clearly proves the custom that the family is entitled to adopt an outsider when there are no sharers in the watan.

21. The lower Court ought to have held that the Government was as a successor in interedt of the watandar family namely Bhimappayya Desnpande.

22. The lower Court ought to have held that the Government resolution of resumption of watan was illegal and ultra vires and not binding on the deceased plaintiff.

23. The lower Court ought have held the decased plff as an heir of the last holder and as such was entitled to hold watan lands without paymen of full assessment and on paument of judi only

24. The lower Court ought to have held that the Government was estoppe from contending that the suit for cash allowance was barred under secti 4 and 6of the Pensions Act as the deceased plff applied for the certificate and it was refused by the Collector.

25. The lower Court ought have held that the suit for cash allowance was not barred under section 4 or 6 of the Pensions Act as the refusa was illegal and ultra vires.

26. The deceased plff was entitled to cash allowance under and t main condition of the sanad. he being the heir to deceased watandar

watandaar Bhimappayya Deshpande.

27. The loer Court was wrong in refusing the prayer of the deceased plff for a declaration that he is entitled to the amount of assessment recovered and cash allowance payable before the date of the suit.

28. The act of the Government in levying full ~~fuss~~ assessment and in withholding cash allowance is illegal and ultra vires. Consequently the amount so levied and withheld becomes a deposit and as such the Government is bound to pay it on a mere declaration being given by the Court..

29. The lower Court, ought to have held that the payment of the Court fee for the recovery of that amount was not necessary

30. The lower Court has not drawn proper inferences in the case.

Typed by
Sd/- x x x

Read by
Sd/- x x x

Compared by
Sd/- x x x

True copy
Sd/- B.A.Joshi
Clerk of the Court.

Seal

True copy

Copy was applied for in person on 15/9/47
30th September 1947

Sd/- xxx
Record Keeper

Copy was ready on 17th Oct 1947

Sd/-
Recordkeeper

Copy was delivered on 20th Oct 47

Sd/-
Recordkeeper

335+115+2
Cop 0-14-0
Sg 0-4-0
Com 0-4-0
Sc 0-1-0
P 0-1-0
1-8-0

ಕರಪತ್ರಗಳನ್ನು

ಕಲಂ ಮತ್ತು ಉಪಕಲಂಗಳು
(ಅಧಿನಿಯಮ — ಕ್ರ. 33)

(ಈ ಮಾದರಿಯ ಕರಪತ್ರಗಳನ್ನು ಕಳ್ಳಭಟ್ಟಿ ಸಾರಾಯಿ)

ಧಾರಣೆಯಾದ ಪ್ರಕರಣಗಳಲ್ಲಿ ಸಂಬಂಧಪಟ್ಟವರಿಗೆ
ಮಂಜೂರು ಮಾಡಲಾದ ಪ್ರಮಾಣ ರೂ. 11.

ಕೆಳಗೆ ಉದಿಸಲು ಮಾಡಿರುವ ನಿಯಮ 33-ನ್ನು ಕಲಂ
(1) ಈ ಮಾದರಿಯ ಅಥವಾ ಇದಕ್ಕೆ ಹೋಲುವ ಯಾವುದೇ ಪ್ರಮಾಣಪತ್ರವನ್ನು ಯಾವುದೇ ವ್ಯಕ್ತಿಯು ಅಥವಾ ಸಂಸ್ಥೆಯು ಪಡೆಯಲು ಅಥವಾ ಪಡೆಯಲು ಪ್ರಯತ್ನಿಸಿದರೆ ಅಥವಾ ಅಂಥ ಪ್ರಮಾಣಪತ್ರವನ್ನು ಪಡೆಯಲು ಅಥವಾ ಪಡೆಯಲು ಪ್ರಯತ್ನಿಸಲು ಯಾವುದೇ ವ್ಯಕ್ತಿಯು ಅಥವಾ ಸಂಸ್ಥೆಯು ಇತರರಿಗೆ ಪ್ರೇರಣೆ ನೀಡಿದರೆ ಅಥವಾ ಸಹಾಯ ಮಾಡಿದರೆ ಅಂಥ ವ್ಯಕ್ತಿಯು ಅಥವಾ ಸಂಸ್ಥೆಯು ಅಪರಾಧವನ್ನು ಎಸಗಿದಂತಾಗುತ್ತದೆ.

ಟಿಪ್ಪಣಿ

(1) ಈ ನಮೂನೆಯ ಮೇಲೆ ಬರೆಯಲು, ಅಥವಾ
(2) ಇದು ಕಳ್ಳಭಟ್ಟಿ ಸಾರಾಯಿ ಮಾರಾಟಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಕೊಡಲಾದ ಕರಪತ್ರ, ಬರಹ, ಮುಂತಾದವುಗಳಲ್ಲಿ ಅಥವಾ ಅವುಗಳ ಮೇಲೆ ಅಂಟಿಸಲಾಗಿರಲಿ ಅಥವಾ ಅಚ್ಚಾಗಿರಲಿ ಅಥವಾ ಬರೆಯಲಾಗಿರಲಿ ಅಥವಾ ಮುದ್ರಿಸಲಾಗಿರಲಿ ಅಥವಾ ಇತರ ಯಾವುದೇ ರೀತಿಯಲ್ಲಿ ಪ್ರಕಟಿಸಲಾಗಿರಲಿ ಅಥವಾ ಪ್ರಸಾರ ಮಾಡಲಾಗಿರಲಿ ಅಥವಾ ಪ್ರಸಾರ ಮಾಡಲು ಉದ್ದೇಶಿಸಲಾಗಿರಲಿ ಅಥವಾ ಅಂಥ ಯಾವುದೇ

ಸೇವೆಗೆ,

ಶ್ರೀಯುತ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು,
ಬಳ್ಳಾರಿ ಜಿಲ್ಲೆ, ಬಳ್ಳಾರಿ.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಸಹಾಯಕ ಆಯುಕ್ತರ ಹುದ್ದೆಗೆ ನೇರ ನೇಮಕಾತಿಯ ಮೂಲಕ ಭರ್ತಿ ಮಾಡುವ ಬಗ್ಗೆ.

ಈ ಮೇಲಿನ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಾನು ಈ ಕೆಳಕಂಡ ವಿವರಗಳನ್ನು ಸಲ್ಲಿಸಿ ಸಹಾಯಕ ಆಯುಕ್ತರ ಹುದ್ದೆಗೆ ನೇರ ನೇಮಕಾತಿಯ ಮೂಲಕ ಭರ್ತಿ ಮಾಡಿಕೊಳ್ಳಲು ಕೋರಿರುತ್ತೇನೆ.

ಹೆಸರು: ಶ್ರೀ. ಕೆ. ಮಲ್ಲಿಕಾರ್ಜುನ ಆಚಾರಿ

ತಂದೆ ಹೆಸರು: ಶ್ರೀ. ಕೆ. ಕೊಟ್ರಯ್ಯ ಆಚಾರಿ

ವಿಳಾಸ: ಮನೆ ನಂ. 34-1-10, ಕಾಳಮ್ಮ ದೇವಸ್ಥಾನದ ಹತ್ತಿರ, ಬಳ್ಳಾರಿ-583 103.

ಜನ್ಮ ದಿನಾಂಕ: 15-12-1978

ಶೈಕ್ಷಣಿಕ ಅರ್ಹತೆಗಳು: ಬಿ.ಎ. ಪದವಿಯನ್ನು ಕರ್ನಾಟಕ ವಿಶ್ವವಿದ್ಯಾಲಯದಿಂದ ಪಡೆದಿರುತ್ತೇನೆ. ಎಲ್.ಎಲ್.ಬಿ. ಪದವಿಯನ್ನು ಗುಲ್ಬರ್ಗಾ ವಿಶ್ವವಿದ್ಯಾಲಯದಿಂದ ಪಡೆದಿರುತ್ತೇನೆ. ಕಾನೂನು ಪದವಿಯಲ್ಲಿ ಚಿನ್ನದ ಪದಕ ಪಡೆದಿರುತ್ತೇನೆ. ಪ್ರಸ್ತುತ ಬಳ್ಳಾರಿಯಲ್ಲಿ ವಕೀಲ ವೃತ್ತಿಯಲ್ಲಿ ತೊಡಗಿಸಿಕೊಂಡಿರುತ್ತೇನೆ. ಕರ್ನಾಟಕ ಲೋಕಸೇವಾ ಆಯೋಗದ ಸಹಾಯಕ ಆಯುಕ್ತರ ಹುದ್ದೆಗೆ ನಡೆಸಿದ ಪರೀಕ್ಷೆಯಲ್ಲಿ ಮುಖ್ಯ ಪರೀಕ್ಷೆಯಲ್ಲಿ ಉತ್ತೀರ್ಣನಾಗಿರುತ್ತೇನೆ. ಸಂದರ್ಶನಕ್ಕೆ ಹಾಜರಾಗಿರುತ್ತೇನೆ. ಆದರೆ ಅಂತಿಮ ಆಯ್ಕೆಪಟ್ಟಿಯಲ್ಲಿ ನನ್ನ ಹೆಸರು ಬಂದಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ ಸಹಾಯಕ ಆಯುಕ್ತರ ಹುದ್ದೆಗೆ ನೇರ ನೇಮಕಾತಿಯ ಮೂಲಕ ಭರ್ತಿ ಮಾಡಿಕೊಳ್ಳಲು ಕೋರಿರುತ್ತೇನೆ.

ಈ ಮೇಲಿನ ಎಲ್ಲಾ ವಿವರಗಳು ಸತ್ಯವಾಗಿರುತ್ತವೆ.

ಇಂತಿ ತಮ್ಮ ವಿಶ್ವಾಸಿ,

ಕೆ. ಮಲ್ಲಿಕಾರ್ಜುನ ಆಚಾರಿ

[illegible]

[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

Copied by
Read by
Sd/ xxx
compared by
Sd/ xxx

True copy
Sd/- B.A. Joshi
Clerk of the Court

Translator
Assistant

179

Suits.

Dharwar.

For a declaration that the order passed by Government directing the Annigeri Deshpande Watan lands to be continued to the legal successors of the late Bhimappayya Chandappayya as Khalsa lands on payment of full assessment are illegal and ultra vires.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 2367
Bombay Castle, 10th March 1948.

Read Government Resolution, Legal Department, No. 4163, dated the 5th June 1946.

Letter from the District Government Pleader, Dharwar, No. 197, dated the 16th February 1948, stating

In the Court of the First Class Sub-Judge, Dharwar. Long Cause Civil Suit No.20 of 1944. Chandappayya Bhimappaya Deshpande of Annigeri.... Plaintiff; Vs. 1. The Government of Bombay. 2. R Pushpavatibai Kom Bheemappayya Deshpande. Defendants. Claim- Rs. 605.	that Civil Appeal No.33 of 1946 filed by the plaintiff in the suit noted in the margin was decided by the First District Judge, Dharwar on 25th August 1947, when the following order was

passed

"The appeal is dismissed with costs."

and forwarding uncertified copies of the judgment and decree.

RESOLUTION :- The result of the appeal is recorded.

By order of the Governor of Bombay.

Original

R.M. MEHTA,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar.

K. 8/3.

Subd for sign.
Orders at p. 2
Issue
10/3.
10/3

Submitted after

Papers may now await the Collector's report for the defence

33-34 (1st)

S. A. No 2 of 1948

	order was decided by the Hon'ble Justice [illegible] on 12th April 1949 when the following order was passed

Suits:
Dharwar.

For a declaration that the order passed by Government directing the Annigeri Deshpande Watan lands to be continued to the legal successors of the late Bhimappayya Chandappayya as Khalsa lands on payment of full assessment are illegal and ultra vires.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 3152
Bombay Castle, 15th April 1948.

Read Government Resolution, Legal Department, No.2367, dated the 10th March 1948.

Endorsement from the Government Pleader, High Court, Bombay, No. 625, dated the 11th February 1948, forwarding a copy of the memorandum of appeal served on him.

In the Court of the First Class Subordinate Judge, Dharwar. Long Cause Civil Suit No. 20 of 1944.	Letter from the Collector of Dharwar No. L.A.W.444, dated the 3rd March 1948, requesting sanction to the defence of second Appeal No.2 of 1948 filed by the plaintiff in the suit noted in the margin and forwarding the memorandum of appeal received
Chandappayya Bhimappaya Deshpande of Annigeri - - Plaintiff; Vs.	
1. The Government of Bombay } Defendants. 2. Pushpavatibai Kom Bheemappayya Deshpande }	
Claim Rs. 605/-	

from the Government Pleader, High Court, Bombay.

Endorsement from the Commissioner, Southern Division, No L3T.317 dated the 15-3-1948 forwarding the above with his concurrence.

RESOLUTION: - Sanction is accorded to the defence of Second Appeal No. 2 of 1948, in the High Court, Bombay, on the lines of the brief accompanying Government Resolution, Legal Department No. 7693, dated the 6th November 1944, and the favourable grounds contained in the judgments of the Civil Judge, Senior Division, Dharwar, dated the 17th December 1945 and the District Judge, Dharwar dated the 25th August 1947.

Issued CSP 1/4

By order of the Governor of Bombay,

Original R. M. Mehta
R. M. MEHTA,
Assistant Secretary to Government.

Subd for high Orders at p. 40 6/4 1/5 AS.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The Government Pleader, High Court, Bombay (with

Copy applied for on 8-1-1951
Copy ready on 5-6-1951
Copy delivered on 12-7-1951
sent by V. P. P. Regd. Post on
Assistant Superintendent

APPEAL No. 2 OF 1948 FROM APPELLATE DECREE.

himappayya Chandappayya Deshpande, minor by his guardian mother Chitravatibai *kom* Chandappayya Deshpande. ... ... (Original Plaintiff) } Appellant;

versus

The Government of Bombay and another. ... ... (Original Defendants) } Respondents.

Second Appeal against the decision of R. D. Shinde, Esquire, District Judge at Dharwar, in Appeal No. 33 of 1946 from the decision of M. S. Bagali, Esquire, Civil Judge (Senior Division) at Dharwar in Suit No. 20 of 1944.

Mr. A. A. Adarkar, Advocate for the Appellant.
Mr. C. K. Shah for the Government Pleader, Advocate for Respondent No. 1.
Mr. M. W. Pradhan, Advocate for Respondent No. 2.

(CORAM:—Bhagwati and Chainani, JJ.).

30th November 1950.

Oral Judgment (per Chainani, J.).—This is an appeal by the plaintiff against the decree passed by the District Judge of Dharwar by which he confirmed the order passed by the Civil Judge, Senior Division, Dharwar, dismissing Civil Suit No. 20 of 1944 brought by the plaintiff.

The present plaintiff's grandfather Bhimappayya was the holder of the Deshpande Watan of Annigeri and Bhadrapur. The Watan consisted of certain lands as well as a cash allowance. Bhimappayya who was the last holder of the Watan died on 17th March 1929 leaving behind two widows Chandrabai and Pushpavati. The widows then applied to Government for permission to adopt a son to Bhimappayya from outside the Watan family, but this permission was refused by Government. On 20th November 1931 Government directed that full assessment should be levied on the Watan lands and that they should be treated as Khalsa lands and then continued in possession of the legal successors of Bhimappayya. In accordance with the orders passed by Government, full assessment was then levied on the lands, which were however continued in possession of the widows. The payment of the cash allowance was also stopped. On 16th June 1932 the widows adopted the present plaintiff's father as a son to Bhimappayya. About 12 years later on 20th January 1944 the adopted son, i.e., the present plaintiff's father, brought a suit against Government and his adoptive mother Pushpavati, in which he asked for a declaration that the order passed by Government on 20th November 1931 directing the levy of full assessment on the lands was null and void and not binding upon the plaintiff, a declaration that he was the validly and legally adopted son of Bhimappayya and as such entitled to hold Deshpande Watan lands of Annigeri and Bhadrapur on payment of Judi, a declaration that he was entitled to receive the cash allowance attached to the Watan and an injunction restraining Government from levying full assessment on the lands. The plaintiff also asked for an order directing Government to pay the cash allowance to him in future.

The suit was resisted by Government. It was contended that as the plaintiff had been adopted from outside the Watan family, Government was entitled to levy full assessment on the Watan lands under the terms of the Sanad issued by Government, that Government was also entitled to withhold the payment of the cash allowance and that the plaintiff's suit was not in time.

Rupees thirteen and annas two only. Dy. No. 1 dated Superintendent, Decree Department 4-6-1951.
Rs.As.Ps.Fls.35.
Copying and Comparing charges:- 13- 2-0
Total:- 13-2-0
K 15.

adoption, the power given to Government of deciding as to the conditions of continuance, had no operation on that right so long as those conditions of continuance remained satisfied. And reading the Sanad in the light of the provisions of law above referred to, it would appear that the clause relating to the unrestricted right of adoption could have had reference only to the rules determining the continuance, and not to the principles of devolution that were to regulate the interests in question."

The question whether Government could increase or levy full assessment on the lands, if the only heir in existence was a person adopted from outside the Watan family, was therefore not decided in the above case. On the other hand, in *Ramsomappa* v. *Secretary of State* (1937) 39 Bom. L.R. 851 Beaumont, C.J., was inclined to the view that Government could increase the assessment in such a contingency. At page 864 he observed :

"I am not prepared to make the declaration asked for in paragraph 2 of the prayer, namely, that plaintiff, as the legally adopted son of Bhimrao Venkatrao Desai, is entitled to hold as owner the entire Watan property.....I think that that declaration might be construed to mean that Government are bound to recognise the plaintiff as holder of the Watan, on the terms of the Sanad without liability to further assessment, and as at present advised, I am not satisfied as to the correctness of that proposition."

Condition No. 2 of the Sanad provides that no Nazarana will be demanded by Government on account of the succession of heirs, lineal, collateral or adopted within the limits of the Watan family and that permission of Government need not be obtained for making such adoption. This condition also clearly contemplates that if adoption is to be made from outside the Watan family, Government's permission should be obtained. This is made more clear in condition No. 3, which provides that Government will grant permission for adopting persons from outside the family, when a request is made to that effect by all the sharers of the Watan and on payment of an annual Nazarana. If the argument advanced by Mr. Adarkar that under condition No. 1 the Government are bound to continue the lands and cash allowances without increase of land tax, even if the heir happens to be a person adopted from outside the Watan family was correct, then condition No. 3 would be superfluous. The Sanad must, however, be read as a whole in order to ascertain the true meaning of its several clauses, for the law presumes that the author of an instrument intended to give effect to every part of it. As observed by the Privy Council in *Purnananthachi* v. *Gopalaswami Odayar* (1936) 38 Bom. L.R. 1247 the interpretation to be adopted should be one, which gives effect, if possible, to all the parts of the document and does not reject any of them. If therefore the Sanad is to be read as a whole, the only construction that can be placed upon it is that Government can increase or levy full assessment on the Watan lands, if the only heir in existence is a person adopted from outside the Watan family. It has been urged by Mr. Adarkar that condition No. 1 does not in so many words say that if there is no heir of the kind referred to therein, Government will increase the assessment. This is true, but the right of Government to take such action follows by necessary implication from the words used in this condition. This also appears to have been the view taken by both Beaumont, C. J. and Wadia, J. in *Ramsommappa* v. *Secretary of State* (1937) 39 Bom. L.R. 851.

We are therefore of the opinion that Government's action in levying full assessment on the lands after the death of the last holder, Bhimappayya, was legally correct.

It has been contended by Mr. Adarkar that Government was not justified in refusing permission to the widows to adopt a person from outside the Watan family. He has also urged that at that time there was no other sharer in the Watan and that Government should therefore have regarded the application made by the two widows as a request made to them by all the sharers to the Watan within the meaning of condition No. 3. The widows could obviously not be regarded as sharers of the Watan. The obligation imposed by condition No. 3 on Government to grant permission for the general privilege of adoption arises only when a request is made to it by all the sharers of the Watan. Such a request could have been made during the lifetime of its last holder Bhimappayya. The widows were not the sharers of the Watan. Consequently, Government were not bound to give permission to them for adopting a person from outside the Watan family.

It has also been urged that Government's action in resuming the cash allowance was wrong. This contention appears to us to be correct. The operative part of the Sanad provides that the lands and cash allowances shall be continued hereditarily on fulfilment of two conditions, that the holders and their heirs shall continue faithful subjects of the British Government and secondly that they should regularly pay the amounts due from them as mentioned in the Sanad. After the adoption of the origina

plaintiff, it cannot be said that there was no heir to the Watan in existence. Mr. Shah on behalf of Government has urged that the word "heirs" should be construed by reference to the other conditions mentioned in the Sanad. There does not however appear to be sufficient justification for doing so. The other portions of the Sanad show that wherever the intention was that the heirs should be from the Watan family, the words "within the limits of the Watandar family" have been specifically used. These words do not occur in the first operative part of the Sanad. It has been held in several cases that adoption relates back to the time of death of the adoptive father. Consequently, the original plaintiff must be presumed to have been in existence at the time when the cash allowance was resumed or when its payment was discontinued by Government. It is not suggested that the other condition mentioned in the Sanad about continuing as faithful subjects of the British Government has been broken. The Condition No. 1 also empowers Government only to demand service or to increase land tax, if there is no heir, who answers the description mentioned in this condition. But this condition does not empower Government to resume or take possession of the lands and cash allowances, if there is no such heir. In our opinion, therefore, after the adoption of the original plaintiff was notified to Government, they were not justified in withholding the payment of the cash allowance. We are, however, unable to grant any relief to the plaintiff in this matter, as the plaintiff has not obtained a certificate from the Collector as required by sections 4 and 6 of the Pensions Act. Even if such a certificate had been obtained, it would not have been possible for us to grant a declaration to the plaintiff that he was entitled to receive the cash allowance, in view of the provision in section 6 of the Pensions Act that the Court shall not make any order or decree in any suit whatever by which the liability of the Government to pay any pension or grant is affected directly or indirectly.

The appeal, therefore, fails and is dismissed. Respondent No. 1 to get his costs from the appellant.

By order of the Court,

(Signed) V. R. GADKARI,

Deputy Registrar.

Exd. [redacted] T. R. N.

True copy

For Deputy Registrar.

The 5-11 day of June 1951.

Bk J 743—2 (Lino)

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

K.

	Rs.as.ps.	
Copying and comparing charges.	5-10-0(Fs.15).	Typed by Shri.D.T.Patwardhan.
paper charges.	0--0-9	Examined by:-
Total Rs.	5-10-9.	Read by:-

otal/Rupees ~~Rs~~.five,annas ten and pies nine only.

Superintendent,Decree Department.
6-3-1951.

Copy applied for on 8-1-1951
Copy ready on 5-3-1951
Copy delivered on 12-7-1951
Sent by P.P. on Regd. Post

Assistant Sheristedar

In the High Court of Judicature at Bombay.

Thursday the 30th day of November 1950.

Appeal No.2 of 1948 From Appellate Decree.

Bhimappayya Chandappayya Deshpande,minor by his guardian mother Chitravatibai kom Chandappayya Deshpande.

(Original Plaintiff).. .. .. Appellant.

Versus

1 The Government of Bombay.2 Pushpawatibai kom Bhimappayya Deshpande (Original Defendants).. .. .. Respondents.

Claim Rs.605 for ~~both purposes~~ Court fees.
Rs.5000/- for Advocate's fees. *

*Amended as per Court's order dated 3-2-51.

The plaintiff sued for a declaration that the order passed by the Provincial Government of Bombay in their Resolution No. 5288/28,dated 20th November 1931,was illegal and ultra vires and was null and void and not binding upon the plaintiff; (2) for a declaration that the plaintiff was validly and legally adopted son of the deceased Bhimappa and hence was entitled to hold the Deshpandegiri Vatan lands of Annigeri and Bhadrapur on payment of judi only and to receive the cash allowance; (3) for a permanent injunction restraining the Government from ~~xx~~ levying full assessment etc, and to recover costs of the suit.

The Original suit No.20 of 1944 was decided by the Civil Judge (Senior Division)of Dharwar who dismissed it with costs.

The Appeal No. 33 of 1946 of the District File was decid-ed by the District Judge of Dharwar who confirmed the decree

of the Court f of first instance and dismissed the appeal with costs.

An appeal has been admitted in the High Court from the deci-sion of the lower Court.Notice was ordered to issue by the Hon-ble Mr.Justice Sen on the 9th day of January 1948.

The grounds of objection to the decision appealed against are:-

1). The decree of the Court below is against law,equity and justice.

2). The lower Court erred in holding that the Government was not legally bound to give permission for the adoption of the dece-ased plff by Chandrabai the widow of Bhimappayya.

3). The lower Court erred in holding that the Government was not legally bound to recognise the adoption of plaintiff a Parai and to treat him as a successor in interest of the deceased Watandar.

4). The lower Court should have held that the Government Re-solution No.5238/28,dated the 20th November 1931 was illegal and ultra vires and not binding on the plaintiff.

5). The lower Court erred in holding that the plaintiff is not entitled to the declaration that he was entitled to hold the Watan lands in suit without payment of full assessment and on payment of Judi only.

6). It should have been held that the plaintiff was entitled to the said declaration and it should have been granted.

7). The plaintiff's claim regarding the cash allowance should have been held to be maintainable without a certificate under the Pensions Act.

8). The lower Court should have made a declaration in favour of the plaintiff that he was entitled to the cash allowance, at any rate on production of the certificate under the Pensions Act,assuming,without admitting that any such certificate was necessary.

9). The lower Court erred in holding that the plff was not en-titled to the injunction sought regarding the levy of the full assessment on the plaint lands and the payment of cash allowance.

10). All the reliefs claimed by the plaintiff should have been awarded and the suit should have been decreed with costs.

10). The lower Court erred in holding that the plaintiff was not entitled to the declaration sought in paragraph 15 clause (iv) of

the plaint regarding the amount of the full assessment already recovered from him and the cash allowance which became due before the date of the suit.

12). The Sanad has not been properly interpreted.

13). The law on the subject has not been properly understood.

14). In the circumstances of the case no permission of the Government was necessary to make the adoption binding on it.

15). The case fulfils the conditions necessary for the continuation of the Watan and the Government was wrong in law and acted beyond its powers in levying the full assessment on the lands in suit and in resuming the watan.

16). Having regard to the facts that there are no shares in the Watan the lower Court should have held that the permission of the Government was not necessary for the adoption of the plaintiff

17). The lower Court erred in holding that clauses 2 and 3 in the Sanad would comply that permission of the Government would be necessary and nazarana could be imposed on the successor of an adopted heir even in the case of a single holder wishing to adopt a boy from outside the family.

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED C.C.Y.

18). The lower Court erred in holding that the holder of the Watandar had agreed, at the time when he entered into the settlement known as the Gordon Settlement and received grants in terms of the settlement, that if there was no natural born lineal or collateral heir in the family or there was no such heir adopted within the Watandar family the watan would be liable to be discontinued.

19). It should have been held that the Government has no right to resume the watan and the action of the Government in so doing is arbitrary, high handed and ultra vires.

20). It should have been held that on the true construction of the Sanad, permission of the Government was not necessary and that the Government had no right to refuse permission assuming without admitting that any such permission was necessary, to the plaintiff being taken in adoption in the Watandar family.

21). The case falls outside the terms of the Sanad r

permission of the Government for adoption and hence it should have been held that no permission of the Government was nece--ssary. The Sanad ought to be read as a whole and it was wrong in law to lay emphasis on the Marathi words only.

22). It should have been held that the plaintiff is a lineal heir and as such is entitled to hold the Watan and the Government is bound to continue the watan.

23). In the circumstances of the case the Government has no right,under the terms of the sanad to resume the watan and to stop the cash allowance.

24). Pleadings have not been properly understood.

25). Proper issues have not been raised.

26). A new case has been made out for the Government.

27). The ancient nature of the Inam is not taken properly into consideration and the stand in question is neither a re--grant or a new grant.

28). The Sanad did not curtail the rights which the Watandars had before the settlement.

29). The Sanad in question does not restrict the general pri--vilege of a Hindu to adopt any person,without any restriction as to family at any time.

30). The sanad only lays down that before giving its permission the Government will require the consent of all the co-sharers in a case when there are co-sharers. This condition does not apply when there is no sharer in the family. The Sanad does not contemplate a case like the present one where there are no sharers and hence the ordinary law of the land will apply,making the adoption of the plaintiff binding on the Government.

31). The sanad in question cannot take away the inherent right of adoption of the watandar and if the Godon Settlement purported to do so,then it was beyond its powers to do so.

32). It should have been held that the widows of the late Bhima Bayya Deshpande complied sufficiently with proviso No.3 of the Sanad.

33). It should have been held that the Govt.was bound to accord permission,assuming it was necessary,to the plaintiff's adoption.

The third proviso is inserted in the Sanad to safe-guard the interests of the co-sharers.No such question of safe-guard-the interests of the co-sharers arises in the present case.

35). The conditions of the grant viz.remaining faithful to the Government and paying the fixed duty were not broken and hence the Government have no right to claim full assessment or to resume the watan.

36). If there is no requisite heir, the Government may insist on service; it cannot resume the watan.

37). There is a custom in the family to adopt an outsider and on two former occasions such adoptions were recognised by the Government. This entitles the widows to adopt an outsider and such an adoption is binding on Government.

38). The lower Court should have held that the Govt. resolution of resumption was illegal, ultra vires and notbinding on the plff.

39). The lower Court should have held that the plaintiff was the legally adopted son of the previous holder of the Watan and as such was entitled to hold the Watan without payment of full assessment and on payment of judi only.

40). It should have been held that theplaintiff was entitled to the cash allowance.

41). The decree of the Court below is otherwise illegal, unjust and erroneous in law.

42). The lower Court erred in law in taxing the pleaders' fees on Rs.5000/-.

HIGH COURT APPELLATE SIDE BOMBAY

Coram:-Bhagwati and Chainani JJ.

For the reasons stated in the accompanying judgment, the Court confirms the decree of the lower Appellate Court and dis-misses the appeal. Respondent No.1 to get his costs from the appellant.

Sd/- S.H.Belavadi

30th November 1950. Deputy Registrar.

Bill of costs in the High Court,

By the Appellant:--	Rs.as.ps.
Stamps for memorandum of appeal.	56-12-0
Stamps for copies of decrees and Judgments.	3-12-0
Stamps for vakalatnama.	2--8-0
Bhatta for process.	4--0-0
Sectioner's Fee.	34--6-0
Advocate's Fee.(vide T.O's decision d/-3-2-1951).	190--0-0

	Rs.as.ps.
Printing charges.	11--0-0.
Total Rs...	302--6-0

By Respondent No.1:--

	Rs.as.ps.
Stamps for vakalatnama (Govt.Pleader appears).	0--0-0
Advocate's Fee. (Vide T.O's decision dated 3-2-1951).	~~45--0-0~~ 190--0-0
Total Rs...	190--0-0

By Respondent No.2:--

	Rs.as.ps.
Stamps for vakalatnama.	2--8-0
Advocate's Fee. (Vide T.O's decision dated 3-2-1951.	~~45=0=0~~ 190--0-0
Total Rs..	192--8-0

Sd/- S.H.Belavadi

(SEAL) 'Deputy Registrar,

The 30th day of November 1950.

--

True Copy

For Deputy Registrar,

The 5th day of March 1951.

Suits:
Dharwar.

For a declaration that the order passed by Government directing the Annigeri Deshpande Watan lands to be continued to the Legal successors of the late Bhimappayya Chandappayya as Khalsa lands on payment of full assessment are illegal and ultra vires.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 12843
Bombay Castle, 9th August 1951.

Read Government Resolution, Legal Department No.3158 dated the ~~18th~~ 1st April 1948.

Letter from the Government Pleader, High Court, Bombay No. 323 dated the 16th January 1951 stating that

In the Court of the First Class Subordinate Judge, Dharwar. Long Cause Civil Suit No.20 of 1944. Chandappayya Bhimappaya Deshpande of Annigeri..... Plaintiff vs. 1. The Government of Bombay) 2. Pushpavatibai Kom) ....Defendants. Bheemappayya Deshpande) Claim Rs.605/-	Second Appeal No.2 of 1948

in the suit noted in the margin was decided by the High Court, Bombay on 30th November 1950, when the following order was passed:-

" The ~~Court~~ Court confirms the decree of the Lower Appellate Court and dismisses the appeal-Respondent No.1 to get his costs from the appellant."

Letter from the Government Pleader, High Court, Bombay, No.7365, dated the 26th July 1951, forwarding certified copies of the judgment and decree.

Resolution: The result of the appeal is recorded.

By order of the Governor of Bombay,

original R.T.Katarki
9/8

R.T.Katarki,
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Dharwar,
The Government Pleader, High Court, Bombay.

KML/9

Submitted for Sign
9/8